WISCONSIN STATUTES

AND

ADMINISTRATIVE CODE

RELATING TO THE PRACTICE OF PHARMACY

MARCH 2003

State of Wisconsin
Department of Regulation and Licensing
Pharmacy Examining Board
1400 E. Washington Avenue
PO Box **8935**
Madison WI 53708

TABLE OF CONTENTS

Excerpts from Rules of the Board of Nursing

Excerpts from Rules of the Department of Regulation and Licensing

Excerpts from Rules of the Department of Health and Family Services

INTRODUCTION

General Information Concerning the
-Pharmacy Examining Board-

The Wisconsin Pharmacy Examining board is housed within the Department of Regulation and Licensing which in turn is of cabinet level rank within the executive branch of the Wisconsin state government. It is the Board's responsibility to administer and enforce pharmacy laws and administrative rules. Its functions include:

(1) Licensing pharmacists, pharmacies, manufacturers and distributors of prescription drugs and devices.
(2) Adopting administrative rules.
(3) Preparing and conducting licensure examinations.
(4) Investigating violations of laws under its jurisdiction, and
(5) Taking disciplinary action against its licensees.

The Board is composed of 7 members. Five are pharmacists and two are public or non-pharmacist members. Board members are appointed by the Governor and confirmed by the Senate to serve for a term of four years and may serve for two consecutive terms. The Board elects its Chair, Vice Chair and Secretary.

The Board meets as a body approximately twelve times per year. In addition, the Board has a number of standing committees and statutory mandated membership on several other councils or boards. These include:

1. Council on Alcohol and Other Drug Abuse
2. Controlled Substances Board
3. Pharmacy Advisory Council
4. Pharmacy Internship Board
5. Examination Committee

A schedule of the dates and locations of board and committee meetings may be obtained from the Board office, PO Box 8935, Madison, WI 53708-8935.

The Department of Regulation and Licensing is an umbrella agency providing administrative services to various professional boards. The Bureau of Health Professions, within the department, provides administrative services to the Pharmacy Examining Board. Questions about board business may be directed to the examining board in care of the Bureau of Health Professions, PO Box 8935, Madison, WI 53708-8935.

This booklet contains statutes and rules relevant to the regulation and practice of pharmacy in Wisconsin. These statutes and rules are part of the law of Wisconsin. To assist in using these materials, a subject index is included at the end of the booklet. Only a limited number of statutes and rules are included in this booklet.

The development of the law in this area is ongoing. Therefore, these rules and statutes may be revised subsequent to the printing of this booklet. Most local libraries maintain current sets of the Wisconsin Administrative Code and the Wisconsin Statutes. These documents as well as other state publications are available from the Department of Administration, Document Sales Division, PO Box 7840, Madison, WI 53707. Telephone number: (608) 266-3358.

All Wisconsin Statutes and Administrative Codes are available on the Internet at the following addresses:

Statutes: http://www.leFris.state.wi.us/rsb/statutes.html

Rules: http://www.leais.state.wi.us/rsb/code/codtoc.html

CHAPTER 15
STRUCTURE OF THE EXECUTIVE BRANCH

SUBCHAPTER I
GENERAL PROVISIONS

SUBCHAPTER II
DEPARTMENTS

SUBCHAPTER I
GENERAL PROVISIONS

15.001 Declaration of policy. **(1) THREE BRANCHES OF GOVERNMENT.** The "republican form of government" guaranteed by the U.S. constitution contemplates the separation of powers within state government among the legislative, the executive and the judicial branches of the government. The legislative branch has the broad objective of determining policies and programs and review of program performance for programs previously authorized, the executive branch carries out the programs and policies and the judicial branch has the responsibility for adjudicating any conflicts which might arise from the interpretation or application of the laws. It is a traditional concept of American government that the 3 branches are to function separately, without intermingling of authority, except as specifically provided by law.

(2) GOALS OF EXECUTIVE BRANCH ORGANIZATION. (a) As the chief administrative officer of the state, the governor should be provided with the administrative facilities and the authority *to* carry out the functions of the governor's office efficiently and effectively within the policy limits established by the legislature.

(b) The administrative agencies which comprise the executive branch should be consolidated into a reasonable number of departments and independent agencies consistent with executive capacity to administer effectively at all levels.

(c) The integration of the agencies in the executive branch should be on a functional basis, so that programs can be coordinated.

(d) Each agency in the executive branch should be assigned a name commensurate with the scope of its program responsibilities, and should be integrated into one of the departments or independent agencies of the executive branch as closely as the conflicting goals of administrative integration and responsiveness to the legislature will permit.

(3) GOALS OF CONTINUING REORGANIZATION. Structural reorganization should be a continuing process through careful executive and legislative appraisal of the placement of proposed new programs and the coordination of existing programs in response to changing emphasis or public needs, and should be consistent with the following goals:

(a) The organization of state government should assure its responsiveness to popular control. It is the goal of reorganization to improve legislative policy–making capability and to improve the administrative capability of the executive to carry out these policies.

(b) The organization of state government should facilitate communication between citizens and government. It is the goal of reorganization through coordination of related programs in function–oriented departments to improve public understanding of government programs and policies and to improve the relationships between citizens and administrative agencies.

(c) The organization of state government shall assure efficient and effective administration of the policies established by the legislature. It is the goal of reorganization to promote efficiency by improving the management and coordination of state services and by eliminating overlapping activities.

History: 1991 a. 316.

15.01 Definitions. In this chapter: **(1g)** "Affiliated credentialing board" means a part–time body that meets all of the following conditions:

(a) **Is** attached to an examining board to regulate a profession that does not practice independently of the profession regulated by the examining board or that practices in collaboration with the profession regulated by the examining board.

(b) With the advice of the examining board to which it is attached, sets standards of professional competence and conduct for the profession under the affiliated credentialing board's supervision, reviews the qualifications of prospective new practitioners, grants credentials, takes disciplinary action against credential holders and performs other functions assigned to it by law.

(1r) "Board" means a part–time body functioning as the policy–making unit for a department or independent agency or a part–time body with policy–making or quasi–judicial powers.

(2) "Commission" means a 3–member governing body in charge of a department or independent agency or of a division or other subunit within a department, except for the Wisconsin waterways commission which shall consist of 5 members, the parole commission which shall consist of **8** members, and the Fox River management commission which shall consist of **7** members. A Wisconsin group created for participation in a continuing interstate body, or the interstate body itself, shall be known as a "commission", but is not a commission for purposes of **s.** 15.06. The parole commission created under **s.** 15.145 (1) shall be known as a "commission", but is not a commission for purposes of **s.** 15.06. The sentencing commission created under **s.** 15.105 (27) shall be known as a "commission" but is not a commission for purposes of **s.** 15.06 (1) to (4m), (7), and (9).

(3) "Committee" means a part–time body appointed to study a specific problem and to recommend a solution or policy alternative with respect to that problem, and intended to terminate on the completion of its assignment. Because of their temporary nature, committees shall be created by session law rather than by statute.

(4) "Council" means a part–time body appointed to function on a continuing basis for the study, and recommendation of solutions and policy alternatives, of the problems arising in a specified functional area of state government, except the Wisconsin land council has the powers specified in **s.** 16.965 (3) and ***(5)*** and the powers granted to agencies under ch. 227, the Milwaukee River revitalization council has the powers and duties specified in **s.** 23.18, the council on physical disabilities has the powers and duties specified in **s.** 46.29 (1) and (2), and the state council on alcohol and other drug abuse has the powers and duties specified in **s.** 14.24.

(5) "Department" means the principal administrative agency within the executive branch of Wisconsin state government, but does not include the independent agencies under subch. III.

(6) "Division," "bureau," "section" and "unit" means the subunits of a department or an independent agency, whether specifically created by law or created by the head of the department or the independent agency for the more economic and efficient administration and operation of the programs assigned to the department or independent agency. The office of justice assistance in the department of administration and the office of credit unions in the

department of financial institutions have the meaning of "division" under this subsection. The office of the long–term care ombudsman under the board on aging and long–term care and the office of educational accountability in the department of public instruction have the meaning of "bureau" under this subsection.

(7) "Examining board" means a part–time body which sets standards of professional competence and conduct for the profession under its supervision, prepares, conducts and grades the examinations of prospective new practitioners, grants licenses, investigates complaints of alleged unprofessional conduct and performs other functions assigned to it by law. "Examining board" includes the board of nursing.

(8) "Head", in relation to a department, means the constitutional officer, commission, secretary or board in charge of the department. "Head", in relation to an independent agency, means the commission, commissioner or board in charge of the independent agency.

(9) "Independent agency" means **an** administrative agency within the executive branch created under subch. III.

History: 1977 c. 29,274; 1979 c. 34; 1983 a. 27, 189,371,410, 538; 1985 a. 29, 120, 180; 1987 s. 27,342,399, 1989 a. 31, 107,202; 1991 a. 39, 269, 315; 1993 a. 16, 107, 210,215; 1995 a. 27 ss. 74 and 9145 (1); 1995 a. 442,462; 1997 a. 27,237; 2001 a. 16, 105,109.

15.02 Offices, departments and independent agencies. The constitutional offices, administrative departments and independent agencies which comprise the executive branch of Wisconsin state government are structured as follows:

(1) SEPARATE CONSTITUTIONAL OFFICES. The governor, lieutenant governor, secretary of state and state treasurer each head a staff to be termed the "office" of the respective constitutional officer.

(2) PRINCIPAL ADMINISTRATIVE UNITS. The principal administrative unit of the executive branch is a "department" or an "independent agency". Each such unit shall bear a title beginning with the words "State of Wisconsin" and continuing with "department of...." or with the name of the independent agency. A department may be headed by a constitutional officer, a secretary, a commission or a board. An independent agency may be headed by a commission, a commissioner or a board.

(3) INTERNAL STRUCTURE. (a) The secretary of each department may, subject to sub.(4), establish the internal structure within the office of secretary so as to best suit the purposes of his or her department. No secretary may authorize the designation of "assistant secretary" as the official position title of any employee of his or her department.

(b) For field operations, departments may establish district or area offices which may cut across divisional lines of responsibility.

(c) For their internal structure, all departments shall adhere to the following standard terms, and independent agencies are encouraged to review their internal structure and to adhere as much as possible to the following standard terms:

1. The principal subunit of the department is the "division". Each division shall be headed by an "administrator". The office of justice assistance in the department of administration and the office of credit unions in the department of financial institutions have the meaning of "division" and the executive staff director of the office of justice assistance in the department **of** administration and the director of credit unions have the meaning of "administrator" under this subdivision.

2. The principal subunit of the division is the "bureau". Each bureau shall be headed by a "director". The office of the long– term care ombudsman under the board on aging and long–term care and the office of educational accountability in the department of public instruction have the meaning of "bureau" under this subdivision.

2m. Notwithstanding subds. 1. and 2., the principal subunit of the department of tourism is the "bureau", which shall be headed by a "director".

3. If further subdivision is necessary, bureaus may be divided into subunits which shall be known as "sections" and which shall be headed by "chiefs" and sections may be divided into subunits which shall be known as "units" and which shall be headed by "supervisors".

(4) INTERNAL ORGANIZATION AND ALLOCATION OF FUNCTIONS. The head of each department or independent agency shall, subject to the approval of the governor, establish the internal organization of the department or independent agency and allocate and reallocate duties and functions not assigned by law to an officer or any subunit of the department or independent agency to promote economic and efficient administration and operation of the department or independent agency. The head may delegate and redelegate to any officer or employee of the department or independent agency any function vested by law in the head. The governor may delegate the authority to approve selected organizational changes to the head of any department or independent agency.

History: 1971 c. 261; 1973 c. 12; 1975 c. 39; 1977 c. 29; 1919 c. 221; 1987 a. 27,399; 1993 a. 16, 184,215,491; 1995 a. 27 ss. 75, 76, 76e and 9145 (1); 1997 a. 27.

Limits of internal departmental reorganization discussed. 61 Atty. Gen. 306.

15.03 Attachment for limited purposes. Any division, office, commission, council or board attached under this section to a department or independent agency or a specified division thereof shall be a distinct unit of that department, independent agency **or** specified division. Any division, office, commission, council or board so attached shall exercise its powers, duties and functions prescribed by law, including rule making, licensing and regulation, and operational planning within the area of program responsibility of the division, office, commission, council or board, independently of the head of the department or independent agency, but budgeting, program coordination and related management functions shall be performed under the direction and supervision of the head of the department or independent agency, except that with respect to the office of the commissioner of railroads, all personnel and biennial budget requests by the office of the commissioner of railroads shall be provided to the department of transportation as required under s. 189.02 (7) and shall be processed and properly forwarded by the public service commission without change except as requested and concurred in by the office of the commissioner of railroads.

History: 1981 c. 347; 1983 a. 27, 1993 a. 123; 1999 a. 9.

15.04 Heads of departments and independent agencies: powers and duties. (1) DUTIES. Each head of a department or independent agency shall:

(a) ***Supervision.*** Except as provided in s. 15.03, plan, direct, coordinate and execute the functions vested in the department **or** independent agency.

(b) ***Budget.*** Biennially compile a comprehensive program budget which reflects all fiscal matters related to the operation of the department or independent agency and each program, subprogram and activity therein.

(c) Advisory bodies. In addition to any councils specifically created by law, create and appoint such councils or committees as the operation of the department or independent agency requires. Members of councils and committees created under this general authority shall serve without compensation, but may be reimbursed for their actual and necessary expenses incurred in the performance of their duties and, if such reimbursement is made, such reimbursement in the case of an officer or employee of this state who represents an agency as a member of such a council or committee shall be paid by the agency which pays the officer's or employee's salary.

(d) ***Biennial report.*** On or before October 15 of each odd–numbered year, submit to the governor and the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2), a report on the performance and operations **of** the department or independent agency during the preceding biennium, and projecting the goals and objectives of the department or independent agency as developed for the program budget report. The secretary of administration may prescribe the format of the report and may require such other information deemed appropriate. Each department or independent agency shall provide a copy of its biennial report to legislators upon request. Any department or independent agency may issue such additional reports on its findings and recommendations as its operations require. **A** department or independent agency may, on or before October 15, submit an annual report prepared by it, in place of the biennial report required under this paragraph, if the submission of the annual reports is approved by the secretary of administration.

(e) Seal. Have authority to adopt a seal for the department or independent agency.

(f) ***Bonds.*** Have authority to require that any officer or employee of the department or independent agency give an official bond under ch.

19, if the secretary of administration agrees that the position held by such officer or employee requires bonding.

(g) ***Discrimination review.*** In order to determine whether there is any arbitrary discrimination on the basis of race, religion, national origin, sex, marital status or sexual orientation as defined in s. 111.32 (13m), examine and assess the statutes under which the head has powers or regulatory responsibilities, the procedures by which those statutes are administered and the rules promulgated under those statutes. If the department or agency head finds any such discrimination, he or she shall take remedial action, including making recommendations to the appropriate executive, legislative or administrative authority.

(i) ***Records and forms management program.*** Establish and maintain a records and forms management program.

(j) ***Records and forms officer.*** Appoint a records and forms officer, who shall be responsible for compliance by the department or independent agency with all records and forms management laws and rules and who may prevent any form from being put into use.

(k) ***Form numbering and filing system.*** Establish a numbering and filing system for forms.

(m) ***Notice on forms.*** See that each form used by the department or independent agency to seek information from municipalities, counties or the public contains on the first page of the form, or in the instructions for completing the form, a conspicuous notice of the authorization for the form, whether or not completing the form is voluntary, if it is not voluntary, the penalty for failure to respond and whether or not any personally identifiable information, as defined under **s.** 19.62 (5), requested in the form is likely to be used for purposes other than for which it is originally being collected. This paragraph does not apply to state tax forms.

(2) DEPUTY. Each secretary of a department or head of an independent agency under s. 230.08 (2) (L) may appoint a deputy who shall serve at the pleasure of the secretary or agency head outside the classified service. The deputy shall exercise the powers, duties and functions of the secretary or head in the absence of the secretary or head, and shall perform such other duties as the secretary or head prescribes. The adjutant general may appoint 2 deputies as provided in **s.** 21.18 (1). In this subsection "secretary" includes the attorney general and the state superintendent of public instruction.

(3) DEPUTY APPROVALS. Positions for which appointment is made under sub.(2) may be authorized only under s. 16.505.

History: 1971 c. **125; 1975** c. **94; 1977** c. **196, 273, 418, 447; 1979 c. 221; 1981** c. **112,350; 1981** c. **391 s. 210; 1983** a. **27,524; 1985** a. **29; 1985 a.** 180 **ss. 2** to 4, 30m; **1985** a. **332; 1987** a. **147 s. 25; 1987** a. **186; 1989** a. **248; 1991 a. 39, 189; 1995** a. **27; 1997 a. 73.**

15.05 Secretaries. (1) SELECTION. (a) If a department is under the direction and supervision of a secretary, the secretary shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor.

(b) Except as provided in pars.(c) and (d), if a department is under the direction and supervision of a board, the board shall appoint a secretary to serve at the pleasure of the board outside the classified service. In such departments, the powers and duties of the board shall be regulatory, advisory and policy–making, and not administrative. All of the administrative powers and duties of the department are vested in the secretary, to be administered by him or her under the direction of the board. The secretary, with the approval of the board, shall promulgate rules for administering the department and performing the duties assigned to the department.

(c) The secretary of natural resources shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor.

(d) The secretary of agriculture, trade and consumer protection shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor.

(3) EXECUTIVE ASSISTANT. Each secretary may appoint an executive assistant to serve at his or her pleasure outside the classified service. The executive assistant shall perform duties as the secretary prescribes. In this subsection, "secretary" includes the attorney general, the adjutant general, the director of the technical college system and the state superintendent of public instruction.

(3m) FIELD DISTRICT OR FIELD AREA DIRECTORS. Each secretary may appoint a director under the classified service for each district or area office established in his or her department under **s.** 15.02 (3) (b).

(4) OFFICIAL OATH. Each secretary shall take and file the official oath prior to assuming office.

(5) EXECUTIVE ASSISTANT APPROVALS. Positions for which appointment is made under sub.(3) may be authorized only under **s.** 16.505.

History: 1973 c. **90; 1977** c. **4, 196; 1985** a. **18; 1985** a. 332 **s. 251** (3); **1989** a. **31, 169; 1993** a. **399; 1995** a. **27.**

A secretary, appointed by the governor, could be removed only by the governor. even though the general appointment statute had been amended to provide that the secretary is appointed by a board ***to*** serve a! the board's pleasure. Moses v. Board of Veterans Affairs, 80 Wis. 2d **411,259 N.W.2d 102 (1977).**

15.06 Commissions and commissioners. (1) SELECTION OF MEMBERS. (a) Except as otherwise provided in this subsection, the members of commissions shall be nominated by the governor, and with the advice and consent of the senate appointed, for staggered 6–year terms expiring on March 1 of the odd–numbered years.

(ag) Members of the Wisconsin waterways commission shall be nominated by the governor, and with the advice and consent of the senate appointed, for staggered 5–year terms.

(ar) The commissioner of railroads shall be nominated by the governor, and with the advice and consent of the senate appointed, for a 6–year term expiring on March 1 of an odd–numbered year.

(b) The commissioner of insurance shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor. The governor may remove from office the commissioner of insurance who was appointed for a fixed term before August 1, 1987.

(d) The members of the personnel commission shall be nominated by the governor, and with the advice and consent of the senate appointed, for 5–year terms, subject to the following conditions:

1. At least one member shall be licensed to practice law in this state.

2. They shall possess some professional experience in the field of personnel or labor relations.

3. No member may hold any other position in state employment.

4. No member, when appointed or for 3 years immediately prior to the date of appointment, may have been an officer of a committee in any political party, partisan political club or partisan political organization or have held or been a candidate for any partisan elective public office. No member may become a candidate for or hold any such office.

5. At no time may more than **2** members be adherents of the same political party.

6. Each member of the commission shall be a **U.S.** citizen and shall have been a resident of this state for at least 3 years.

(2) SELECTION OF OFFICERS. Each commission may annually elect officers other than a chairperson from among its members as its work requires. Any officer may be reappointed or reelected. **At** the time of making new nominations to commissions, the governor shall designate a member or nominee of each commission to serve as the commission's chairperson for a 2–year term expiring on March 1 of the odd–numbered year except that:

(a) Commencing March 1, 1979, and thereafter, the labor and industry review commission shall elect one of its members to serve as the commission's chairperson for a 2–year term expiring on March 1 of the odd–numbered year.

(3) FULL-TIME OFFICES. (a) A commissioner may not hold any other office or position of profit or pursue any other business or vocation, but shall devote his or her entire time to the duties of his or her office. This paragraph does not apply to:

1. The commissioner of insurance.

3. The members **of** the Wisconsin waterways commission.

(b) The commissioner of insurance shall not engage in any other occupation, business or activity that is in any way inconsistent with the performance of the duties of the commissioner of insurance, nor shall the commissioner hold any other public office.

(4) CHAIRPERSON; ADMINISTRATIVE DUTIES. The administrative duties of each cornmission shall be vested in its chairperson, to be administered by the chairperson under the statutes and rules of the commission and subject to the policies established by the commission.

(4m) EXECUTIVE ASSISTANT. Each commission chairperson under s. 230.08 (2) (m) and each commissioner of the public service commission may appoint an executive assistant to serve at his or her

pleasure outside the classified service. The executive assistant shall perform duties as the chairperson or commissioner prescribes.

(5) **FREQUENCY OF MEETINGS; PLACE.** Every commission shall meet on the call of the chairperson or a majority of its members. Every commission shall maintain its offices in Madison, but may meet or hold hearings at such other locations as will best serve the citizens of this state.

(6) QUORUM. A majority of the membership of a commission constitutes a quorum to do business, except that vacancies shall not prevent a commission from doing business. This subsection does not apply to the parole commission.

(7) REPORTS. Every commission attached to a department shall submit to the head of the department, upon request of that person not more often than annually, a report on the operation of the commission.

(8) OFFICIAL OATH. Every commissioner shall take and file the official oath prior to assuming office.

(9) EXECUTIVE ASSISTANT APPROVALS. Positions for which appointment is made under sub.(4m) may be authorized only under **s. 16.505.**

History: 1971 c. 193, 307; 1977 c. 29, 196,274; 1981 c. 347; 1983 a. 27, 371,410, 538; 1985 a. 29; 1987 a. 27,403; 1989 a. 31; 1991 a. 39,269,316, 1993 a. 16, 123; 1995 a. 27; 1997 a. 27; 2001 a. 16.

A single member of the aersonnel commission is empowered to act as the commission when 2 of the 3 commission positions are vacant. 68 Atty. Gen. 323.

A commissioner designated as chairperson of the commission under sub.(2) is not appointed to a new position, and Art. IV, s. 26, precludes a salary increase based on that designation. 76 Atty. Gen. 52.

Sub.(3) (a) prohibits a commissioner from **pursuing business interests that would prevent properly fulfilling the duties of the office. 77 Atty. Gen. 36.**

15.07 Boards. (1) SELECTION OF MEMBERS. (a) If a department or independent agency is under the direction and supervision of a board, the members of the board, other than the members serving on the board because of holding another office or position, shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve for terms prescribed by law, except:

1. Members of the higher educational aids board shall be appointed by the governor without senate confirmation.

2. Members of the elections board shall be appointed as provided in **s.** 15.61.

3. Members of the employee trust funds board appointed or elected under **s.** 15.16 (1) (a), (b), (d) and ***(f)*** shall be appointed or elected as provided in that section.

4. Members of the investment hoard appointed under s. 15.76 (3) shall be appointed as provided in that section.

5. The members of the educational communications board appointed under **s.** 15.57 ***(5)*** and (7) shall he appointed as provided in that section.

6. Members of the University of Wisconsin Hospitals and Clinics Board appointed under s. 15.96 (8) shall be appointed by the governor without senate confirmation.

(b) For each board not covered under par.(a), the governor shall appoint the members of the board, other than the members serving on the board because of holding another office or position and except as otherwise provided, for terms prescribed by law except that all members of the following boards, or all members of the following boards specified in this paragraph, other than the members serving on a board because of holding another office or position, shall be nominated by the governor, and with the advice and consent of the senate appointed, for terms provided by law:

1. Banking review board.
2. College savings program board.
3. Credit union review board.
5. Savings and loan review board.
8. Real estate board.
9. Board on aging and long–term care.
10. Land and water conservation board.
11. Waste facility siting board.
12. Prison industries board.
14. Deferred compensation board.
15. The 3 members of the lower Wisconsin state riverway board appointed under **s.** 15.445 (3) (b) 7.
15m. The members of the state fair park board appointed under **s.** 15.445 (4) (a) 3. to **5.**
16. Land information board.

Note: Subd. 16. is repealed eff. 9–1–03 by 1997 Wis. Act 27.

17. Real estate appraisers board.
18. Savings bank review board.
19m. Auctioneer board.
20. The 3 members of the Kickapoo reserve management board appointed under **s.** 15.445 ***(2)*** (h) 3.
22. Private employer health care coverage board.

Note: Subd. 22. is repealed eff. 1–1–10 by 1999 Wis. Act 9.

(c) Except as provided under par.(cm), fixed terms of members of boards shall expire on May 1 and, if the term is for an even number of years, shall expire in an odd–numbered year.

(cm) The term of one member of the ethics board shall expire on each May 1. The terms of 3 members of the development finance board appointed under **s. 15.155** (1) (a) 6. shall expire on May 1 of every even–numbered year and the terms of the other **3** members appointed under **s.** 15.155 (1) (a) 6. shall expire on May 1 of every odd–numbered year. The terms of the 3 members of the land and water conservation board appointed under s. 15.135 (4) (b) 2. shall expire on January 1. The term of the member of the land and water conservation board appointed under **s.** 15.135 (4) (b) 2m. shall expire on May 1 of an even–numbered year. The terms of members of the real estate board shall expire on July 1. The terms of the appraiser members of the real estate appraisers board and the terms of the auctioneer and auction company representative members of the auctioneer board shall expire on May 1 in an even–numbered year.

(cs) No member of the auctioneer hoard, real estate appraisers board or real estate board may be an officer, director or employee of a private organization that promotes or furthers any profession or occupation regulated by that board.

(2) SELECTION OF OFFICERS. At its first meeting in each year, every board shall elect a chairperson, vice chairperson and secretary each of whom may be reelected for successive terms, except that:

(a) The chairperson and vice chairperson of the investment board shall be designated biennially by the governor.

(b) The chairperson of the board on health care information shall be designated biennially by the governor.

(d) The officers elected by the board of regents of the University of Wisconsin System and the technical college system board shall be known as a president, vice president and secretary.

(e) The representative of the department of justice shall serve as chairperson of the claims board and the representative of the department of administration shall serve **as** its secretary.

(f) The state superintendent of public instruction or his or her designated representative shall serve as chairperson of the school district boundary appeal board.

(g) **A** representative of the department of justice designated by the attorney general shall serve as nonvoting secretary to the law enforcement standards board.

(h) The chairperson of the state fair park board shall be designated annually by the governor from among the members appointed under s. 15.445 (4) (a) **3.,** 4. and ***5.***

(j) At its first meeting in each even–numbered year, the state capitol and executive residence board shall elect officers for 2–year terms.

(k) The governor shall serve as chairperson of the governor's work–based learning board.

(L) The governor shall serve as chairperson of the information technology management board and the chief information officer shall serve as secretary of that board.

(3) FREQUENCY OF MEETINGS. (a) If a department or independent agency is under the direction and supervision of a board, the board shall meet quarterly and may meet at other times on the call of the chairperson or a majority of **its** members. If a department or independent agency is under the direction and supervision of a board, the board shall, in addition, meet no later than August **31** of each even–numbered year to consider and approve a proposed budget of the department or independent agency for the succeeding fiscal biennium.

(b) Except as provided in par.(bm), each board not covered under par.(a) shall meet annually, and may meet at other times on the call of the chairperson or a majority of its members. The auctioneer board, the real estate board and the real estate appraisers board shall also meet on the call of the secretary of regulation and licensing or his or her designee within the department.

(bm) 1. The board on health care information shall meet 4 times each year and may meet at other times on the call of the chairperson or a majority of the board's members.

2. The environmental education board shall meet 4 times each year and may meet at other times on the call of the chairperson.

3. The auctioneer board shall meet at least 4 times each year.

4. The information technology management board shall meet at least 4 times each year and may meet at other times on the call of the chairperson.

(4) QUORUM. A majority of the membership of a board constitutes a quorum to do business and, unless a more restrictive provision is adopted by the board, a majority of a quorum may act in any matter within the jurisdiction of the board. This subsection does not apply to actions of the ethics board or the school district boundary appeal board as provided in **ss.** 19.47 (4) and 117.05 (2) (a).

(5) REIMBURSEMENT FOR EXPENSES; COMPENSATION. Except as provided in sub.(5m), the members of each board shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties, such reimbursement in the case of an officer or employee of this state who represents an agency as a member of a board to be paid by the agency which pays the member's salary. The members shall receive no compensation for their services, except that the following members of boards, except full–time state officers or employees, also shall be paid the per diem stated below for each day on which they were actually and necessarily engaged in the performance of their duties:

(a) Members of the investment board, $50 per day.

(b) Members of the banking review board, $25 per day but not to exceed $1,500 per year.

(c) Members of the auctioneer board, $25 per day.

(d) Members of the board of agriculture, trade and consumer protection, not exceeding $35 per day as fixed by the board with the approval of the governor, but not to exceed $1,000 per year.

(e) In lieu of a per diem, the members of the technical college system board shall receive $100 annually.

(f) Members of the teachers retirement board, appointive members of the Wisconsin retirement board, appointive members of the group insurance board, members of the deferred compensation board and members of the employee trust funds board, $25 per day.

(g) Members of the savings and loan review board, $10 per day.

(gm) Members of the savings bank review board, $10 per day.

(h) Voting members of the land and water conservation board, $25 per day.

(i) Members of the educational approval board, $25 per day.

(j) Members of the state fair park board, $10 per day but not to exceed $600 per year.

(k) Members of the ethics board, $25 per day.

(L) Members of the school district boundary appeal board, $25 per day.

(n) Members of the elections board, $25 per day.

(o) Members of the burial sites preservation board, $25 per day.

(r) Members of the real estate board, $25 per day.

(s) Members of the credit union review board, $25 per day but not to exceed $1,500 per year.

(t) Members of the waste facility siting board who are town or county officials, $35 per day.

(w) Members of the lower Wisconsin state riverway board, $25 per day.

(x) Members of the real estate appraisers board, $25 per day.

(y) Members of the Kickapoo reserve management board, $25 per day.

(5m) LIMITATIONS ON SALARY AND EXPENSES. (b) *Lower Wisconsin state riverway board.* The members, except for the chairperson, of the lower Wisconsin state riverway board shall be reimbursed under sub.(5) for only their necessary and actual travel expenses incurred in the performance of their duties, or shall be paid $25 plus mileage incurred in the performance of their duties, whichever is greater. The chairperson of the lower Wisconsin state riverway board shall be reimbursed for all his or her actual and necessary expenses incurred in the performance of his or her duties. The lower Wisconsin state riverway board shall determine which expenses of the chairperson are actual and necessary before reimbursement.

(6) REPORTS. Every board created in or attached to a department or independent agency shall submit to the head of the department or independent agency, upon request of that person not more often than annually, a report on the operation of the board.

(7) OFFICIAL OATH. Each member of a board shall take and file the official oath prior to assuming office.

History: 1971 c. 100 s. 23; 1971 c. 125,261, 270, 323; 1973 c. 90, 156, 299, 334; 1975 c. 39, 41, 422; 1977 c. 29 ss. 24, 26, 1650m (3); 1977 c. 203,277,418,427; 1979 c. 34, 110,221, 346; 1981 c. 20, 62, 94, 96, 156,314, 346, 374,391; 1983 a. 27, 282.403; 1985 a. 20, 29, 316; 1987 a. 27, 119, 142,354,399,403; 1989 a. 31, 102, 114,219,299, 340; 1991 a. 25, 39, 116,221,269,316; 1993 a. 16, 75, 102,184, 349, 399, 490; 1995 a. 27, 216, 347; 1997 a. 27; 1999 a. 9, 44, 181, 197; 2001 a.16.

"Membership" as used in sub.(4) means the authorized number of positions and not the number of positions that are currently occupied. 66 Atty. Gen. 192.

15.08 Examining boards and councils. (1) SELECTION OF MEMBERS. All members of examining boards shall be residents of this state and shall, unless otherwise provided by law, be nominated by the governor, and with the advice and consent of the senate appointed. Appointments shall be for the terms provided by law. Terms shall expire on July 1. No member may serve more than 2 consecutive terms. No member of an examining board may be an officer, director or employee of a private organization which promotes or furthers the profession or occupation regulated by that board.

(1m) PUBLIC MEMBERS. (a) Public members appointed under **s.** 15.405 or 15.407 shall have all the powers and duties of other members except they shall not prepare questions for or grade any licensing examinations.

(am) Public members appointed under **s.** 15.405 or 15.407 shall not be, nor ever have been, licensed, certified, registered or engaged in any profession or occupation licensed or otherwise regulated by the board, examining board or examining council to which they are appointed, shall not be mamed to any person so licensed, certified, registered or engaged, and shall not employ, be employed by or be professionally associated with any person so licensed, certified, registered or engaged.

(b) The public members of the chiropractic examining board, the dentistry examining board, the hearing and speech examining board, the medical examining board, perfusionists examining council, respiratory care practitioners examining council and council on physician assistants, the board of nursing, the nursing home administrator examining board, the veterinary examining board, the optometry examining board, the pharmacy examining board, the mamage and family therapy, professional counseling, and social work examining board, and the psychology examining board shall not be engaged in any profession or occupation concerned with the delivery of physical or mental health care.

(c) The membership of each examining board and examining council created in the department of regulation and licensing after June 1, 1975, shall be increased by one member who shall be a public member appointed to serve for the same term served by the other members of such examining board or examining council, unless the act relating to the creation of such examining board or examining council provides that 2 or more public members shall be appointed to such examining board or examining council.

(2) SELECTION OF OFFICERS. At its first meeting in each year, every examining board shall elect from among its members a chairperson, vice chairperson and, unless otherwise provided by law, a secretary. Any officer may be reelected to succeed himself or herself.

(3) FREQUENCY OF MEETINGS. (a) Every examining board shall meet annually and may meet at other times on the call of the chairperson or of a majority of its members.

(b) The medical examining board shall meet at least 12 times annually.

(c) The hearing and speech examining board shall meet at least once every 3 months.

(4) QUORUM. (a) A majority of the membership of an examining board constitutes a quorum to do business, and a majority of a quorum may act in any matter within the jurisdiction of the examining board.

(b) Notwithstanding par.(a), no certificate or license which entitles the person certified or licensed to practice a trade or profession shall be suspended or revoked without the affirmative vote of two–thirds of the voting membership of the examining board.

(5) GENERAL POWERS. Each examining board: (a) May compel the attendance of witnesses, administer oaths, take testimony and receive proof concerning all matters within its jurisdiction.

(b) Shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.

(c) May limit, suspend or revoke, or reprimand the holder of, any license, permit or certificate granted by the examining board.

(6) IMPROVEMENT OF THE PROFESSION. In addition to any other duties vested in it by law, each examining board shall foster the standards of education or training pertaining to its own trade or profession, not only in relation of the trade or profession to the interest of the individual or to organized business enterprise, but also in relation to government and to the general welfare. Each examining board shall endeavor, both within and outside its own trade or profession, to bring about a better understanding of the relationship of the particular trade or profession to the general welfare of this state.

(7) COMPENSATION AND REIMBURSEMENT FOR EXPENSES. Each member of an examining board shall, unless the member is a full–time salaried employee of this state, be paid a per diem of **$25** for each day on which the member was actually and necessarily engaged in the performance of examining board duties. Each member of an examining board shall be reimbursed for the actual and necessary expenses incurred in the performance of examining board duties.

(8) OFFICIAL OATH. Every member of an examining board shall take and file the official oath prior to assuming office.

(9) ANNUAL REPORTS. Every examining board shall submit to the head of the department in which it is created, upon request of that person not more often than annually, a report on the operation of the examining board.

(10) SEAL. Every examining board may adopt a seal.

History: 1971 c. 40; 1975 c. 86, 199; 1977 c. 418; 1979 c. 32; 1979 c. 34 ss. 32e to 32s, 2102 (45) (a); 1979 c. 221; 1981 c. 94; 1983 a. 403,524; 1985 a. 332,340; 1987 a. 399; 1989 a. 229, 316, 359: 1991 a. 39, 160, 316; 1993 a. 105, 107, 184, 490; 1995 a. 245; 1997 a. 175; 1999 a. 180; 2001 a. 80, 89, 105.

Selection and terms of officers of regulatory and licensing boards are discussed. 75 Atty. Gen. 247 (1986).

15.085 Affiliated credentialing boards. (1) SELECTION OF MEMBERS. All members of affiliated credentialing boards shall be residents of this state and shall, unless otherwise provided by law, be nominated by the governor, and with the advice and consent of the senate appointed. Appointments shall be for the terms provided by law. Terms shall expire on July 1. No member may serve more than **2** consecutive terms. No member of an affiliated credentialing board may be an officer, director or employee of a private organization which promotes or furthers the profession or occupation regulated by that board.

(1m) PUBLIC MEMBERS. (a) Public members appointed under s. **15.406** shall have all of the powers and duties of other members except that they shall not prepare questions for or grade any licensing examinations.

(am) Public members appointed under **s. 15.406** shall not be, nor ever have been, licensed, certified, registered or engaged in any profession or occupation licensed or otherwise regulated by the affiliated credentialing board to which they are appointed, shall not be named to any person so licensed, certified, registered or engaged, and shall not employ, be employed by or be professionally associated with any person so licensed, certified, registered or engaged.

(b) The public members of the physical therapists affiliated credentialing board, podiatrists affiliated credentialing board or occupational therapists affiliated credentialing board shall not be engaged in any profession or occupation concerned with the delivery of physical or mental health care.

(2) SELECTION OF OFFICERS. At its first meeting in each year, every affiliated credentialing board shall elect from among its members a chairperson, vice chairperson and, unless otherwise provided by law, a secretary. Any officer may be reelected to succeed himself or herself.

(3) FREQUENCY OF MEETINGS. (a) Every affiliated credentialing board shall meet annually and may meet at other times on the call of the chairperson or of a majority of its members.

(b) The chairperson of an affiliated credentialing board shall meet at least once every **6** months with the examining board to which the affiliated credentialing board is attached to consider all matters of joint interest.

(4) QUORUM. (a) A majority of the membership of an affiliated credentialing board constitutes a quorum to do business, and a majority of a quorum may act in any matter within the jurisdiction of the affiliated credentialing board.

(b) Notwithstanding par.(a), no certificate or license which entitles the person certified or licensed to practice a trade or profession shall be suspended or revoked without the affirmative vote of two–thirds of the membership of the affiliated credentialing board.

(5) GENERAL POWERS. Each affiliated credentialing board:

(a) May compel the attendance of witnesses, administer oaths, take testimony and receive proof concerning all matters within its jurisdiction.

(b) Shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession. In addition to any other procedure under ch. **227** relating to the promulgation of rules, when promulgating a rule, other than an emergency rule under **s. 227.24,** an affiliated credentialing board shall do all of the following:

1. Submit the proposed rule to the examining board to which the affiliated credentialing board is attached. The proposed rule shall be submitted under this subdivision at least **60** days before the proposed rule is submitted to the legislative council staffunder **s. 227.15** (1).

2. Consider any comments on a proposed rule made by the examining board to which the affiliated credentialing board is attached, if the examining board submits the comments to the affiliated credentialing board within 30 days after a public hearing on the proposed rule under **s. 227.18** or, if no hearing is held, within 30 days after the proposed rule is published under **s. 227.16 (2)** (e).

3. Include, in the report submitted to the legislature under **s. 227.19 (2),** any comments on the proposed rule submitted by the examining board under subd. **2.** and the affiliated credentialing board's responses to those comments.

(c) May limit, suspend or revoke, or reprimand the holder of, any license, permit or certificate granted by the affiliated credentialing board.

(6) IMPROVEMENT OF THE PROFESSION. In addition to any other duties vested in it by law, each affiliated credentialing board shall foster the standards of education or training pertaining to its own trade or profession, not only in relation of the trade or profession to the interest of the individual or to organized business enterprise, but also in relation to government and to the general welfare. Each affiliated credentialing board shall endeavor, both within and outside its own trade or profession, to bring about a better understanding of the relationship of the particular trade or profession to the general welfare of this state.

(7) COMPENSATION AND REIMBURSEMENT FOR EXPENSES. Each member of an affiliated credentialing board shall, unless the member is a full–time salaried employee of this state, be paid a per diem of **$25** for each day on which the member was actually and necessarily engaged in the performance of affiliated credentialing board duties. Each member of an affiliated credentialing board shall be reimbursed for the actual and necessary expenses incurred in the performance of affiliated credentialing board duties.

(8) OFFICIAL OATH. Every member of an affiliated credentialing board shall take and file the official oath prior to assuming office.

(9) ANNUAL REPORTS. Every affiliated credentialing board shall submit to the head of the department in which it is created, upon request of that person not more often than annually, a report on the operation of the affiliated credentialing board.

(10) SEAL. Every affiliated credentialing board may adopt a seal.

History: 1993 a. 107; 1997 a. 175; 1999 a. 180.

15.09 Councils. (1) SELECTION OF MEMBERS. (a) Unless otherwise provided by law, the governor shall appoint the members of councils for terms prescribed by law. Except as provided in par.(b), fixed terms shall expire on July 1 and shall, if the term is for an even number of years, expire in an odd–numbered year.

(b) The terms of the members of the council on recycling shall expire as specified under s. **15.347 (17)** (c).

(2) SELECTION OF OFFICERS. Unless otherwise provided by law, at its first meeting in each year every council shall elect a chairperson,

vice chairperson and secretary from among its members. Any officer may be reelected for successive terms. For any council created under the general authority of **s.** 15.04 (1) (c), the constitutional officer or secretary heading the department or the chief executive officer of the independent agency in which such council is created shall designate an employee of the department or independent agency to serve as secretary of the council and to be a voting member thereof.

(3) LOCATION AND FREQUENCY OF MEETINGS. Unless otherwise provided by law, every council shall meet at least annually and shall also meet on the call of the head of the department or independent agency in which it is created, and may meet at other times on the call of the chairperson or a majority of its members. A council shall meet at such locations as may be determined by it unless the constitutional officer or secretary heading the department or the chief executive officer of the independent agency in which it is created determines a specific meeting place.

(4) QUORUM. Except as otherwise expressly provided, a majority of the membership of a council constitutes a quorum to do business, and a majority of a quorum may act in any matter within the jurisdiction of the council.

(5) **POWERS AND DUTIES.** Unless otherwise provided by law, a council shall advise the head of the department or independent agency in which it is created and shall function on a continuing basis for the study, and recommendation of solutions and policy alternatives, of the problems arising in a specified functional area of state government.

(6) REIMBURSEMENT FOR EXPENSES. Members of a council shall not be compensated for their services, but members of councils created by statute shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties, such reimbursement in the case of an elective or appointive officer or employee of this state who represents an agency as a member of a council to be paid by the agency which pays his or her salary.

(7) REPORTS. Unless a different provision is made by law for transmittal or publication of a report, every council created in a department or independent agency shall submit to the head of the department or independent agency, upon request of that person not more often than annually, a report on the operation of the council.

(8) OFFICIAL OATH. Each member of a council shall take and file the official oath prior to assuming office.

History: 1971 c. 211; 1977 c. 29; 1977 c. 196 s. 131; 1979 c. 34.346; 1983 a. 27,388, 410; 1985 a. 84; 1989 a. 335; 1991 a. 39,189; 1993 a. 184.

SUBCHAPTER II
DEPARTMENTS

15.40 Department of regulation and licensing; creation.

There is created a department of regulation and licensing under the direction and supervision of the secretary of regulation and licensing.

History: 1971 c. 270 s. 104; 1975 c. 39; 1977 c. 29; 1977 c. 196 s. 131; 1977 c. 418 ss. 24 to 27.

15.405 Same; attached boards and examining boards.

(1) ACCOUNTING EXAMINING BOARD. There is created an accounting examining board in the department of regulation and licensing. The examining board shall consist of 7 members, appointed for staggered 4–year terms. Five members shall hold certificates as certified public accountants and be eligible for licensure to practice in this state. Two members shall be public members.

(2) EXAMINING BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS, PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS. There is created an examining board of architects, landscape architects, professional engineers, designers and land surveyors in the department of regulation and licensing. Any professional member appointed to the examining board shall be registered to practice architecture, landscape architecture, professional engineering, the design of engineering systems or land surveying under ch. 443. The examining board shall consist of the following members appointed for &year terms: 3 architects, 3 landscape architects, 3 professional engineers, 3 designers, 3 land surveyors and 10 public members.

(a) In operation, the examining board shall be divided into an architect section, a landscape architect section, an engineer section, a designer section and a land surveyor section. Each section shall consist of the 3 members of the named profession appointed to the examining board and 2 public members appointed to the section. The examining board shall elect its own officers, and shall meet at least twice annually.

(b) All matters pertaining to passing upon the qualifications of applicants for and the granting or revocation of registration, and all other matters of interest to either the architect, landscape architect, engineer, designer or land surveyor section shall be acted upon solely by the interested section.

(c) All matters of joint interest shall be considered by joint meetings of all sections of the examining board or of those sections to which the problem is of interest.

(2m) EXAMINING BOARD OF PROFESSIONAL GEOLOGISTS, HYDROLOGISTS AND SOIL SCIENTISTS. (a) There is created in the department of regulation and licensing an examining board of professional geologists, hydrologists and soil scientists consisting of the following members appointed for 4–year terms:

1. Three members who are professional geologists licensed under ch. 470.

2. Three members who are professional hydrologists licensed under ch. 470.

3. Three members who are professional soil scientists licensed under ch. 470.

4. Three public members.

(b) In operation, the examining board shall be divided into a professional geologist section, a professional hydrologist section and a professional soil scientist section. Each section shall consist of the 3 members of the named profession appointed to the examining board and one public member appointed to the section. The examining board shall elect its own officers, and shall meet at least twice annually.

(c) All matters pertaining to passing upon the qualifications of applicants for and the granting or revocation of licenses, and all other matters of interest to either the professional geologist, hydrologist or soil scientist section shall be acted upon solely by the interested section.

(d) All matters of joint interest shall be considered by joint meetings of all sections of the examining board or of those sections to which the matter is of interest.

(3) AUCTIONEER BOARD. (a) There is created in the department of regulation and licensing an auctioneer board consisting of the following members appointed for 4–year terms:

1. Four members, each of whom is registered under ch. 480 as an auctioneer, or is an auction company representative, as defined in s. 480.01 (3), of an auction company that is registered under ch. 480 as an auction company.

2. Three public members.

(b) No member of the board may serve more than 2 terms.

(5) **CHIROPRACTIC EXAMINING BOARD.** There is created a chiropractic examining board in the department of regulation and licensing. The chiropractic examining board shall consist of 6 members, appointed for staggered 4–year terms. Four members shall be graduates from a school of chiropractic and licensed to practice chiropractic in this state. Two members shall be public members. No person may be appointed to the examining board who is in any way connected with or has a financial interest in any chiropractic school.

(5g) CONTROLLED SUBSTANCES BOARD. There is created in the department of regulation and licensing a controlled substances board consisting of the attorney general, the secretary of health and family services and the secretary of agriculture, trade and consumer protection, or their designees; the chairperson of the pharmacy examining board or a designee; and one psychiatrist and one pharmacologist appointed for 3–year terms.

(6) DENTISTRY EXAMINING BOARD. There is created a dentistry examining board in the department of regulation and licensing consisting of the following members appointed for &year terms:

(a) Six dentists who are licensed under ch. 447.

(b) Three dental hygienists who are licensed under ch. 447. Notwithstanding s. 15.08 (1m) (a), the dental hygienist members may participate in the preparation and grading of licensing examinations for dental hygienists.

(c) Two public members.

(6m) HEARING AND SPEECH EXAMINING BOARD. There is created a hearing and speech examining board in the department of regulation and licensing consisting of the following members appointed for 4–year terms:

(a) Three hearing instrument specialists licensed under subch. I of ch. 459.

(b) One otolaryngologist.

(c) 1. One audiologist registered under subch. III of ch. 459. This subdivision applies during the period beginning on December 1, 1990, and ending on June 30, 1993.

2. One audiologist licensed under subch. II of ch. 459. This subdivision applies after June 30, 1993.

(d) 1. One speech–language pathologist registered under subch. III of ch. 459. This subdivision applies during the period beginning on December 1, 1990, and ending on June 30, 1993.

2. One speech–language pathologist licensed under subch. II of ch. 459. This subdivision applies after June 30, 1993.

(e) Two public members. One of the public members shall be a hearing aid user.

(7) MEDICAL EXAMINING BOARD. (a) There is created a medical examining board in the department of regulation and licensing.

(b) The medical examining board shall consist of the following members appointed for staggered 4–year terms:

1. Nine licensed doctors of medicine.

2. One licensed doctor of osteopathy.

3. Three public members.

(c) The chairperson of the patients compensation fund peer review council under **s.** 655.275 shall serve as a nonvoting member of the medical examining board.

(7c) MARRIAGE AND FAMILY THERAPY, PROFESSIONAL COUNSELING, AND SOCIAL WORK EXAMINING BOARD. (a) There is created a marriage and family therapy, professional counseling, and social work examining board in the department of regulation and licensing consisting of the following members appointed for 4–year terms:

1. Four social worker members who are certified or licensed under ch. 457.

2. Three marriage and family therapist members who are licensed under ch. 457.

3. Three professional counselor members who are licensed under ch. 457.

4. Three public members who represent groups that promote the interests of consumers of services provided by persons who are certified or licensed under ch. 457.

(am) The 4 members appointed under par.(a) 1. shall consist of the following:

1. One member who is certified under ch. 457 as an advanced practice social worker.

2. One member who is certified under ch. 457 as an independent social worker.

3. One member who is licensed under ch. 457 as a clinical social worker.

4. At least one member who is employed as a social worker by a federal, state or local governmental agency.

(b) In operation, the examining board shall be divided into a social worker section, a marriage and family therapist section and a professional counselor section. The social worker section shall consist of the 4 social worker members of the examining board and one of the public members of the examining board. The marriage and family therapist section shall consist of the 3 marriage and family therapist members of the examining board and one of the public members of the examining board. The professional counselor section shall consist of the 3 professional counselor members of the examining board and one of the public members of the examining board.

(c) All matters pertaining to granting, denying, limiting, suspending, or revoking a certificate or license under ch. 457, and all other matters of interest to either the social worker, marriage and family therapist, or professional counselor section shall be acted upon solely by the interested section of the examining board.

(d) All matters that the examining board determines are of joint interest shall be considered by joint meetings of all sections of the examining board or of those sections to which the problem is of interest.

(e) Notwithstanding **s.** 15.08 (4) (a), at a joint meeting of all sections of the examining board, a majority of the examining board constitutes **a** quorum to do business only if at least 8 members are present at the meeting. At a meeting of a section of the examining board or a joint meeting of 2 or more of the sections of the examining board, each member who is present has one vote, except as provided in par.(f).

(f) At a joint meeting of the social worker section and one or both of the other sections of the examining board, each member who is present has one vote, except that the social worker members each have three–fourths of a vote if all 4 of those members are present.

(7g) BOARD OF NURSING There is created a board of nursing in the department of regulation and licensing. The board of nursing shall consist of the following members appointed for staggered 4–year terms: 5 currently licensed registered nurses under ch. 441; 2 currently licensed practical nurses under ch. 441; and 2 public members. Each registered nurse member shall have graduated from a program in professional nursing and each practical nurse member shall have graduated from a program in practical nursing accredited by the state in which the program was conducted.

(7m) NURSING HOME ADMINISTRATOR EXAMINING BOARD. There is created a nursing home administrator examining board in the department of regulation and licensing consisting of 9 members appointed for staggered 4–year terms and the secretary of health and family services or a designee, who shall serve as a nonvoting member. Five members shall be nursing home administrators licensed in this state. One member shall be a physician. One member shall be a nurse licensed under ch. **441.** Two members shall be public members. No more than 2 members may be officials or full–time employees of this state.

(8) OPTOMETRY EXAMINING BOARD. There is created an optometry examining board in the department of regulation and licensing. The optometry examining board shall consist of 7 members appointed for staggered 4–year terms. Five of the members shall be licensed optometrists in this state. Two members shall be public members.

(9) PHARMACY EXAMINING BOARD. There is created a pharmacy examining board in the department of regulation and licensing. The pharmacy examining board shall consist of 7 members appointed for staggered 4–year terms. Five of the members shall be licensed to practice pharmacy in this state. Two members shall be public members.

(10m) PSYCHOLOGY EXAMINING BOARD. There is created in the department of regulation and licensing a psychology examining board consisting of 6 members appointed for staggered 4–year terms. Four of the members shall be psychologists licensed in this state. Each of the psychologist members shall represent a different specialty area within the field of psychology. Two members shall be public members.

(10r) REAL ESTATE APPRAISERS BOARD. (a) There is created a real estate appraisers board in the department of regulation and licensing consisting of the following members appointed for 4–year terms:

1. Three appraisers who are certified or licensed under ch. 458.

2. One assessor, as defined in **s.** 458.09 (1).

3. Three public members.

(b) Of the appraiser members of the board, one shall be certified under **s.** 458.06 as a general appraiser, one shall be certified under s. 458.06 as a residential appraiser and one shall be licensed under **s.** 458.08 as an appraiser. No public member of the board may be connected with or have any financial interest in **an** appraisal business or in any other real estate–related business. Section 15.08 (tm) **(am)** applies to the public members of the board. No member of the board may serve more than 2 consecutive terms.

(c) Notwithstanding **s.** 15.07 (4), a majority of the board constitutes a quorum to do business only if at least 2 of the members present are appraiser members and at least one of the members present is a public member.

(11) REAL ESTATE BOARD. There is created a real estate board in the department of regulation and licensing. The real estate board shall consist of 7 members appointed to staggered 4–year terms. Four of the members shall be real estate brokers or salespersons licensed in this state. Three members shall be public members. Section 15.08 (Im) (am) applies to the public members of the real estate board. No member may serve more than 2 terms. The real estate board does not have rule–making authority.

(12) VETERINARY EXAMINING BOARD. There is created a veterinary examining board in the department of regulation and licensing. The veterinary examining board shall consist of 8 members appointed for staggered 4–year terms. Five of the members shall be licensed veterinarians in this state. One member shall be a veterinary technician certified in this state. Two members shall be public

members. No member of the examining board may in any way be financially interested in any school having a veterinary department or a course of study in veterinary or animal technology.

(16) FUNERAL DIRECTORS EXAMINING BOARD. There is created a funeral directors examining board in the department of regulation and licensing. The funeral directors examining board shall consist of 6 members appointed for staggered 4–year terms. Four members shall be licensed funeral directors under ch. 445 in this state. Two members shall be public members.

(17) BARBERING AND COSMETOLOGY EXAMINING BOARD. There is created a barbering and cosmetology examining board in the department of regulation and licensing. The barbering and cosmetology examining board shall consist of 9 members appointed for 4–year terms. Four members shall be licensed barbers or cosmetologists, 2 members shall be public members, one member shall be a representative of a private school of barbering or cosmetology, one member shall be a representative of a public school of barbering or cosmetology and one member shall be a licensed electrologist. Except for the 2 members representing schools, no member may be connected with or have any financial interest in a barbering or cosmetology school.

History: 1973 c. 90, 156; 1975 c. 39, 86, 199, 200, 383, 422; 1977 c. 26, 29, 203; 1977 c. 418; 1979 c. 34 ss. 45, 47 to 52; 1979 c. 221, 304; 1981 c. 94 ss. 5, 9; 1981 c. 356; 1983 a. 27, 408, 485, 538; 1985 a. 340; 1987 a. 257 s. 2; 1987 a. 264, 265, 316; 1989 a. 316, 340; 1991 a. 39, 78, 160, 189, 269; 1993 a. 16, 102, 463, 465, 481, 1995 a. 27 s. 9126 (19); 1995 a. 225; 1995 a. 305 s. 1; 1995 a. 321, 417; 1997 a. 96, 252, 300; 2001 a. 16, 80.

A medical school instructor serving without compensation is ineligible to serve on the board of medical examiners. 62 Atty. Gen. 193.

An incumbent real estate examining board member is entitled to hold over in office until a successor is duly appointed and confirmed by the senate. The board was without authority to reimburse the nominee for expenses incurred in attending a meeting during an orientation period prior *to* confirmation. 63 Atty. Gen. 192.

15.406 Same; attached affiliated credentialing boards.

(1) PHYSICAL THERAPISTS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, a physical therapists affiliated credentialing board consisting of the following members appointed for 4–year terms:

(a) Three physical therapists who are licensed under subch. III of ch. 448.

(am) One physical therapist assistant licensed under subch. III of ch. 448.

Note: Par. (am) is created eff. 4–1-04 by 2001 Wis. Act 70.

(b) One public member.

(2) DIETITIANS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, a dietitians affiliated credentialing board consisting of the following members appointed for 4–year terms:

(a) Three dietitians who are certified under subch. V of ch. 448.

(b) One public member.

(3) PODIATRISTS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, a podiatrists affiliated credentialing board consisting of the following members appointed for 4–year terms:

(a) Three podiatrists who are licensed under subch. IV of ch. 448.

(b) One public member.

(4) ATHLETIC TRAINERS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, an athletic trainers affiliated credentialing board consisting of the following members appointed for 4–year terms:

(a) Four athletic trainers who are licensed under subch. VI of ch. 448 and who have not been issued a credential in athletic training by a governmental authority in a jurisdiction outside this state. One of the athletic trainer members may also be licensed under ch. 446 or 447 or subch. II, III or IV of ch. 448.

(b) One member who is licensed to practice medicine and surgery under subch. II of ch. 448 and who has experience with athletic training and sports medicine.

(c) One public member.

(5) OCCUPATIONAL THERAPISTS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, an occupational therapists affiliated credentialing board consisting of the following members appointed for 4–year terms:

(a) Three occupational therapists who are licensed under subch. VII of ch. 448.

(b) Two occupational therapy assistants who are licensed under subch. VI of ch. 448.

(c) Two public members.

History: 1993 a. 107, 443; 1997 a. 75, 175; 1999 a. 9, 180; 2001 a. 70.

15.407 Same; councils.

(1m) RESPIRATORY CARE PRACTITIONERS EXAMINING COUNCIL. There is created a respiratory care practitioners examining council in the department of regulation and licensing and serving the medical examining board in an advisory capacity in the formulating of rules to be promulgated by the medical examining board for the regulation of respiratory care practitioners. The respiratory care practitioners examining council shall consist of 3 certified respiratory care practitioners, each of whom shall have engaged in the practice of respiratory care for at least 3 years preceding appointment, one physician and one public member. The respiratory care practitioner and physician members shall be appointed by the medical examining board. The members of the examining council shall serve 3–year terms. Section 15.08 (1) to **(4)** (a) and (6) to **(10)** shall apply to the respiratory care practitioners examining council.

(2) COUNCIL ON PHYSICIAN ASSISTANTS. There is created a council on physician assistants in the department of regulation and licensing and serving the medical examining board in an advisory capacity. The council's membership shall consist of:

(a) The vice chancellor for health sciences of the University of Wisconsin–Madison or the vice chancellor's designee.

(b) One public member appointed by the governor for a 2–year term.

(c) Three physician assistants selected by the medical examining board for staggered 2–year terms.

(2m) PERFUSIONISTS EXAMINING COUNCIL. There is created a perfusionists examining council in the department of regulation and licensing and serving the medical examining board in an advisory capacity. The council shall consist of the following members appointed for 3–year terms:

(a) Three licensed perfusionists appointed by the medical examining board.

(b) One physician who is a cardiothoracic surgeon or a cardiovascular anesthesiologist and who is appointed by the medical examining board.

(c) One public member appointed by the governor.

(3) EXAMINING COUNCILS; BOARD OF NURSING. The following examining councils are created in the department of regulation and licensing to serve the board of nursing in an advisory capacity. Section 15.08 (1) to (4) (a) and (6) to (10), applies to the examining councils.

(a) *Registered nurses.* There is created an examining council on registered nurses to consist of 4 registered nurses of not less than 3 years' experience in nursing, appointed by the board of nursing for staggered 4–year terms.

(b) ***Practical nurses.*** There is created an examining council on licensed practical nurses to consist of one registered nurse, 3 licensed practical nurses and one registered nurse who is a faculty member of an accredited school for practical nurses, appointed by the board of nursing for staggered 3–year terms. No member may be a member of the examining council on registered nurses.

(4) COUNCIL ON SPEECH–LANGUAGE PATHOLOGY AND AUDIOLOGY. There **is** created a council on speech–language pathology and audiology in the department of regulation and licensing and serving the hearing and speech examining board in an advisory capacity. The council shall consist of the following members appointed for 3–year terms:

(a) Three speech–language pathologists licensed under subch. II of ch. 459.

(b) Two audiologists licensed under subch. II of ch. 459.

(5) COUNCIL ON REAL ESTATE CURRICULUM AND EXAMINATIONS. There **is** created in the department of regulation and licensing a council on real estate curriculum and examinations consisting of 7 members appointed for 4–year terms. Five members shall be real estate brokers or salespersons licensed under ch. 452 and 2 members shall be public members. Of the real estate broker or salesperson members, one member shall be a member of the real estate board appointed by the real estate board, at least 2 members shall be

licensed real estate brokers with at least 5 years of experience as real estate brokers, and at least one member shall be a licensed real estate salesperson with at least 2 years of experience as a real estate salesperson. Of the 2 public members, at least one member shall have at least 2 years of experience in planning or presenting real estate educational programs. No member of the council may serve more than 2 consecutive terms.

(6) **PHARMACIST ADVISORY COUNCIL.** There is created a pharmacist advisory council in the department of regulation and licensing and serving the pharmacy examining board in an advisory capacity. The council shall consist of the following members appointed for 3–year terms:

(a) Two pharmacists licensed under ch. 450 appointed by the chairperson of the pharmacy examining board.

(b) One physician licensed under subch. II of ch. 448 appointed by the chairperson of the medical examining board.

(c) One nurse licensed under ch. 441 appointed by the chairperson of the board of nursing.

(7) **MASSAGE THERAPY AND BODYWORK COUNCIL.** (a) There is created a massage therapy and bodywork council in the department of regulation and licensing, serving the department in an advisory capacity. The council shall consist of **7** members, appointed for 4–year terms, who are massage therapists or bodyworkers certified under ch. 460 and who have engaged in the practice of massage therapy or bodywork for at least 2 years preceding appointment.

(b) In appointing members under par.(a), the governor shall ensure, to the maximum extent practicable, that the membership of the council is diverse, based on all of the following factors:

1. Massage or bodywork therapies practiced in this state.

2. Affiliation and nonaffiliation with a professional association for the practice of massage therapy or bodywork.

3. Professional associations with which massage therapists or bodyworkers in this state are affiliated.

4. Practice in urban and rural areas in this state.

Note: Sub. (7) is created eff. 3–1-03 by 2001 Wis. Act 74.

History: 1973 c. 149; 1975 c. 39, 86, 199,383,422; 1977 c. 418; 1979 c. 34 ss. 46, 53; 1981 c. 390 s. 252; 1985 a. 332 s. 251 (1); 1987 a. 399; 1989 a. 229,316,341,359; 1991 a. 316; 1993 a. 105, 107; 1997 a. 68, 175; 1997 a. 237 s. 727m; 1999 a. 32, 180, 186; 2001 a. 74, 89.

CHAPTER 19
GENERAL DUTIES OF PUBLIC OFFICIALS

SUBCHAPTER II
PUBLIC RECORDS AND PROPERTY

19.34 Procedural information. (1) Each authority shall adopt, prominently display and make available for inspection and copying at its offices, for the guidance of the public, a notice containing a description of its organization and the established times and places at which, the legal custodian under s. 19.33 from whom, and the methods whereby, the public may obtain information and access to records in its custody, make requests for records, or obtain copies of records, and the costs thereof. This subsection does not apply to members of the legislature or to members of any local governmental body.

(2) (a) Each authority which maintains regular office hours at the location where records in the custody of the authority are kept shall permit access to the records of the authority at all times during those office hours, unless otherwise specifically authorized by law.

(b) Each authority which does not maintain regular office hours at the location where records in the custody of the authority are kept shall:

1. Permit access to its records upon at least **48** hours' written or oral notice of intent to inspect or copy a record; or

2. Establish a period of at least **2** consecutive hours per week during which access to the records of the authority is permitted. In such case, the authority may require **24** hours' advance written or oral notice of intent to inspect or copy a record.

(c) An authority imposing a notice requirement under par. (b) shall include a statement of the requirement in its notice under sub. (1), if the authority is required to adopt a notice under that subsection.

(d) If a record of an authority is occasionally taken to **a** location other than the location where records of the authority are regularly kept, and the record may be inspected at the place at which records of the authority are regularly kept upon one business day's notice, the authority or legal custodian of the record need not provide access to the record at the occasional location.

History: 1981 c. 335.

CHAPTER 146
MISCELLANEOUS HEALTH PROVISIONS

146.81 Health care records; definitions. In ss. 146.81 to 146.84:

(1) "Health care provider" means any of the following:

(a) A nurse licensed under ch. 441.

(b) A chiropractor licensed under ch. 446.

(c) A dentist licensed under ch. 447.

(d) A physician, physician assistant, perfusionist, or respiratory care practitioner licensed or certified under subch. II of ch. 448.

(dg) A physical therapist licensed under subch. III of ch. 448.

(dr) A podiatrist licensed under subch. IV of ch. 448.

(em) A dietitian certified under subch. V of ch. 448.

(eq) An athletic trainer licensed under subch. VI of ch. 448.

(es) An occupational therapist or occupational therapy assistant licensed under subch. VII of ch. 448.

(f) An optometrist licensed under ch. 449.

(fm) A pharmacist licensed under ch. 450.

(g) An acupuncturist certified under ch. 451.

(h) A psychologist licensed under ch. 455.

(hg) A social worker, marriage and family therapist, or professional counselor certified or licensed under ch. 457.

(hm) A speech–language pathologist or audiologist licensed under subch. II of ch. 459 or a speech and language pathologist licensed by the department of public instruction.

(hp) A massage therapist or bodyworker certified under ch. 460.

NOTE: Par.(hp) is shown **as** amended **eff. 3–1-03** by **2001 Wis. Act 74. Prior to 3–1-03 it reads:**

(hp) A massage therapist or bodyworker issued **a** license **of registration under subch. XI of ch. 440.**

(i) A partnership of any providers specified under pars.(a) to (hp).

(j) A corporation or limited liability company of any providers specified under pars.(a) to (hp) that provides health care services.

(k) **An** operational cooperative sickness care plan organized under ss. 185.981 to 185.985 that directly provides services through salaried employees in its own facility.

(L) A hospice licensed under subch. IV of ch. 50.

(m) **An** inpatient health care facility, as defined in s. 50.135 (1).

(n) A community–based residential facility, as defined in s. 50.01 (Ig).

(p) A rural medical center, as defined in s. 50.50 (1 1).

(2) "Informed consent" means written consent to the disclosure of information from patient health care records to an individual, agency or organization that includes all of the following:

(a) The name of the patient whose record is being disclosed.

(b) The type of information to be disclosed.

(c) The types of health care providers making the disclosure.

(d) The purpose of the disclosure such as whether the disclosure is for further medical care, for an application for insurance, to obtain payment of an insurance claim, for a disability determination, for a vocational rehabilitation evaluation, for a legal investigation or for other specified purposes.

(e) The individual, agency or organization to which disclosure may be made.

(f) The signature of the patient or the person authorized by the patient and, if signed by a person authorized by the patient, the relationship of that person to the patient or the authority of the person.

(g) The date on which the consent is signed.

(h) The time period during which the consent is effective.

(3) "Patient" means a person who receives health care services from a health care provider.

(4) "Patient health care records" means all records related to the health of a patient prepared by or under the supervision of a health care provider, including the records required under s. 146.82 **(2)** (d) and (3) (c), but not those records subject to s. 51.30, reports collected under s. 69.186, records of tests administered under s. 252.15 (2) (a) 7., 343.305, 938.296 (4) or (5) or 968.38 (4) or (5), fetal monitor tracings, as defined under s. 146.817 (1), or a pupil's physical health records maintained by a school under s. 118.125. "Patient health care records" also includes health summary forms prepared under **s.** 302.388 (2).

(5) "Person authorized by the patient" means the parent, guardian or legal custodian of a minor patient, as defined in **s.** 48.02 (8) and (11), the person vested with supervision of the child under s. 938.183 or 938.34 (4d), (4h), (4m) or (4n), the guardian of a patient adjudged incompetent, as defined **in** s. 880.01 (3) and (4), the personal representative or spouse of a deceased patient, any person authorized in writing by the patient or a health care agent designated by the patient as a principal under ch. 155 if the patient has been found to be incapacitated under s. 155.05 (2), except as limited by the power of attorney for health care instrument. If no spouse survives a deceased patient, "person authorized by the patient" also means an adult member of the deceased patient's immediate family, as defined in s. 632.895 (1) (d). A court may appoint a temporary guardian for a patient believed incompetent to consent to the release of records under this section as the person authorized by the patient to decide upon the release of records, if no guardian has been appointed for the **patient**.

History: 1979 c. 221; 1981 c. 39 s. 22; 1983 a. 27; 1983 a. 189 **s.** 329 **(1);** 1983 a. 535; 1985 a. 315; 1987 a. 27, 70, 264; 1987 a. 399 ss. 403br, 491r; 1987 **a.** 403; 1989 a. 31, 168, 199, 200, 229, 316, 359; 1991 a. 39, 160, 269; 1993 a. 27, 32, 105, 112, 183, 385, 443, 496; 1995 **a.** 27 s. 9145 **(1);** 1995 a. 77, 98, 352; 1997 **a.** 27, 67, 75, 156, 175; 1999 a. 9, 32, 151, 180, 188; 2001 a. 38, 70, 74, 80, 89.

146.815 Contents of certain patient health care records. (1) Patient health care records maintained for hospital inpatients shall include, if obtainable, the inpatient's occupation and the industry in which the inpatient is employed at the time of admission, plus the inpatient's usual occupation.

(2) (a) If a hospital inpatient's health problems may be related to the inpatient's occupation or past occupations, the inpatient's physician shall ensure that the inpatient's health care record contains available information from the patient or family about these occupations and any potential health hazards related to these occupations.

(b) If a hospital inpatient's health problems may be related to the occupation or past occupations of the inpatient's parents, the inpatient's physician shall ensure that the inpatient's health care record contains available information from the patient or family about these occupations and any potential health hazards related to these occupations.

(3) The department shall provide forms that may be used to record information specified under sub.(2) and shall provide guidelines for determining whether to prepare the occupational history required under sub.(2). Nothing in this section shall be construed to require a hospital or physician to collect information required in this section from or about a patient who chooses not to divulge such information.

History: 1981 c. 214.

146.817 Preservation of fetal monitor tracings and microfilm copies. (1) In this section, "fetal monitor tracing" means documentation of the heart tones of a fetus during labor and delivery of the mother of the fetus that are recorded from an electronic fetal monitor machine.

(2) (a) Unless a health care provider has first made and preserved a microfilm copy of a patient's fetal monitor tracing, the health care provider may delete or destroy part or all of the patient's fetal monitor tracing only if 35 days prior to the deletion or destruction the health care provider provides written notice to the patient.

(b) If a health care provider has made and preserved a microfilm copy of a patient's fetal monitor tracing and if the health care provider has deleted or destroyed part or all of the patient's fetal monitor tracing, the health care provider may delete or destroy part or all of the microfilm copy of the patient's fetal monitor tracing only if 35 days prior to the deletion or destruction the health care provider provides written notice to the patient.

(c) The notice specified in pars.(a) and (b) shall be sent to the patient's last–known address and shall inform the patient of the imminent deletion or destruction of the fetal monitor tracing or of the microfilm copy of the fetal monitor tracing and of the patient's right, within 30 days after receipt of notice, to obtain the fetal monitor tracing or the microfilm copy of the fetal monitor tracing from the health care provider.

(d) The notice requirements under this subsection do not apply after 5 years after a fetal monitor tracing was first made.

History: 1987 a. 27, 399,403.

146.819 Preservation or destruction of patient health care records. (1) Except as provided in sub.(4), any health care provider who ceases practice or business as a health care provider or the personal representative of a deceased health care provider who was an independent practitioner shall do one of the following for all patient health care records in the possession of the health care provider when the health care provider ceased business or practice or died:

(a) Provide for the maintenance of the patient health care records by a person who states, in writing, that the records will be maintained in compliance with ss. 146.81 to 146.835.

(b) Provide for the deletion or destruction of the patient health care records.

(c) Provide for the maintenance of some of the patient health care records, as specified in par.(a), and for the deletion or destruction of some of the records, as specified in par.(b).

(2) If the health care provider or personal representative provides for the maintenance of any of the patient health care records under sub.(1), the health care provider or personal representative shall also do at least one of the following:

(a) Provide written notice, by 1st class mail, to each patient or person authorized by the patient whose records will be maintained, at the last–known address of the patient or person, describing where and by whom the records shall be maintained.

(b) Publish, under ch. 985, a class 3 notice in a newspaper that is published in the county in which the health care provider's or decedent's health care practice was located, specifying where and by whom the patient health care records shall be maintained.

(3) If the health care provider or personal representative provides for the deletion or destruction of any of the patient health care records under sub.(1), the health care provider or personal representative shall also do at least one of the following:

(a) Provide notice to each patient or person authorized by the patient whose records will be deleted or destroyed, that the records pertaining to the patient will be deleted or destroyed. The notice shall be provided at least 35 days prior to deleting or destroying the records, shall be in writing and shall be sent, by 1st class mail, to the last–known address of the patient to whom the records pertain or the last–known address of the person authorized by the patient. The notice shall inform the patient or person authorized by the patient of the date on which the records will be deleted or destroyed, unless the patient or person retrieves them before that date, and the location where, and the dates and times when, the records may be retrieved by the patient or person.

(b) Publish, under ch. 985, a class 3 notice in a newspaper that is published in the county in which the health care provider's or decedent's health care practice was located, specifying the date on which the records will be deleted or destroyed, unless the patient or person authorized by the patient retrieves them before that date, and the location where, and the dates and times when, the records may be retrieved by the patient or person.

(4) This section does not apply to a health care provider that is any of the following:

(a) **A** community–based residential facility or nursing home licensed under **s.** 50.03.

(b) **A** hospital approved under **s.** 50.35.

(c) **A** hospice licensed under s. 50.92.

(d) **A** home health agency licensed under **s.** 50.49 (4).

(f) **A** local health department, as defined in **s.** 250.01 (4), that ceases practice or business and transfers the patient health care records in its possession to a successor local health department.

History: 1991 a. 269; 1993 a. 27; 1999 a. 9.

Cross Reference: ***See*** **also ch. Med 21, Wis. adm. code.**

146.82 Confidentiality of patient health care records.

(1) CONFIDENTIALITY. All patient health care records shall remain confidential. Patient health care records may be released only to the persons designated in this section or to other persons with the informed consent of the patient or of a person authorized by the patient. This subsection does not prohibit reports made in compliance with s. 146.995, 253.12 (2) or 979.01 or testimony authorized under **s.** 905.04 (4) (h).

(2) ACCESS WITHOUT INFORMED CONSENT. (a) Notwithstanding sub.(1), patient health care records shall be released upon request without informed consent in the following circumstances:

1. To health care facility staff committees, or accreditation or health care services review organizations for the purposes of conducting management audits, financial audits, program monitoring and evaluation, health care services reviews or accreditation.

2. To the extent that performance of their duties requires access to the records, to a health care provider or any person acting under the supervision of a health care provider or to a person licensed under **s.** 146.50, including medical staff members, employees or persons serving in training programs or participating in volunteer programs and affiliated with the health care provider, if any of the following is applicable:

a. The person is rendering assistance to the patient.

b. The person is being consulted regarding the health of the patient.

c. The life or health of the patient appears to be in danger and the information contained in the patient health care records may aid the person in rendering assistance.

d. The person prepares or stores records, for the purposes of the preparation or storage of those records.

3. To the extent that the records are needed for billing, collection or payment of claims.

4. Under a lawful order of a court of record.

5. In response to a written request by any federal or state governmental agency to perform a legally authorized function, including but not limited to management audits, financial audits, program monitoring and evaluation, facility licensure or certification or individual licensure or certification. The private pay patient, except if a resident of a nursing home, may deny access granted under this subdivision by annually submitting to a health care provider, other than a nursing home, a signed, written request on a form provided by the department. The provider, if a hospital, shall submit a copy of the signed form to the patient's physician.

6. For purposes of research if the researcher is affiliated with the health care provider and provides written assurances to the custodian of the patient health care records that the information will be used only for the purposes for which it is provided to the researcher, the information will not be released to a person not connected with the study, and the final product of the research will not reveal information that may serve to identify the patient whose records are being released under this paragraph without the informed consent of the patient. The private pay patient may deny access granted under this subdivision by annually submitting to the health care provider a signed, written request on a form provided by the department.

7. To a county agency designated under s. 46.90 (2) or other investigating agency under s. 46.90 for purposes of s. 46.90 (4) (a) and (5) or to the county protective services agency designated under **s.** 55.02 for purposes of s. 55.043. The health care provider may release information by initiating contact with the county agency or county protective services agency without receiving a request for release of the information from the county agency or county protective services agency.

8. To the department under s. 255.04. The release of a patient health care record under this subdivision shall be limited to the information prescribed by the department under s. 255.04 (2).

9. a. In this subdivision, "abuse" has the meaning given in s. 51.62 (1) (ag); "neglect" has the meaning given in s. 51.62 (1) (br); and "parent" has the meaning given in s. 48.02 (13), except that "parent" does not include the parent of a minor whose custody is transferred to a legal custodian, as defined in s. 48.02 (11), or for whom a guardian is appointed under s. 880.33.

b. Except as provided in subd. 9. c. and d., to staff members of the protection and advocacy agency designated under s. 51.62 (2) or to staff members of the private, nonprofit corporation with which the agency has contracted under s. 51.62 (3) (a) 3., if any, for the purpose of protecting and advocating the rights of a person with developmental disabilities, as defined under s. 51.62 (1) (am), who resides in or who is receiving services from an inpatient health care facility, as defined under s. 51.62 (1) (b), or a person with mental illness, as defined under s. 51.62 (1) (bm).

c. If the patient, regardless of age, has a guardian appointed under s. 880.33, or if the patient is a minor with developmental disability, as defined in s. 51.01 (5) (a), who has a parent or has a guardian appointed under s. 48.831 and does not have a guardian appointed under s. 880.33, information concerning the patient that is obtainable by staff members of the agency or nonprofit corporation with which the agency has contracted is limited, except as provided in subd. 9. e., to the nature of an alleged rights violation, if any; the name, birth date and county of residence of the patient; information regarding whether the patient was voluntarily admitted, involuntarily committed or protectively placed and the date and place of admission, placement or commitment; and the name, address and telephone number of the guardian of the patient and the date and place of the guardian's appointment or, if the patient is a minor with developmental disability who has a parent or has a guardian appointed under s. 48.831 and does not have a guardian appointed under s. 880.33, the name, address and telephone number of the parent or guardian appointed under s. 48.831 of the patient.

d. Except as provided in subd. 9. e., any staff member who wishes to obtain additional information about a patient described in subd. 9. c. shall notify the patient's guardian or, if applicable, parent in writing of the request and of the guardian's or parent's right to object. The staff member shall send the notice by mail to the guardian's or, if applicable, parent's address. If the guardian or parent does not object in writing within 15 days after the notice is mailed, the staff member may obtain the additional information. If the guardian or parent objects in writing within 15 days after the notice is mailed, the staff member may not obtain the additional information.

e. The restrictions on information that is obtainable by staff members of the protection and advocacy agency or private, nonprofit corporation that are specified in subd. 9. c. and d. do not apply if the custodian of the record fails to promptly provide the name and address of the parent or guardian; if a complaint is received by the agency or nonprofit corporation about a patient, or if the agency or nonprofit corporation determines that there is probable cause to believe that the health or safety of the patient is in serious and immediate jeopardy, the agency or nonprofit corporation has made a good–faith effort to contact the parent or guardian upon receiving the name and address of the parent or guardian, the agency or nonprofit corporation has either been unable to contact the parent or guardian or has offered assistance to the parent or guardian to resolve the situation and the parent or guardian has failed or refused to act on behalf of the patient; if a complaint is received by the agency or nonprofit corporation about a patient or there is otherwise probable cause to believe that the patient has been subject to abuse or neglect by a parent or guardian; or if the patient is a minor whose custody has been transferred to a legal custodian, as defined in s. 48.02 (11) or for whom a guardian that is an agency of the state or a county has been appointed.

10. To persons as provided under s. 655.17 (7) (b), as created by 1985 Wisconsin Act 29, if the patient files a submission of controversy under s. 655.04 (1), 1983 stats., on or after July 20, 1985 and before June 14, 1986, for the purposes of s. 655.17 (7) (b), as created by 1985 Wisconsin Act 29.

11. To a county department, as defined under s. 48.02 (2g), a sheriff or police department or a district attorney for purposes of investigation of threatened or suspected child abuse or neglect or suspected unborn child abuse or for purposes of prosecution of alleged child abuse or neglect, if the person conducting the investigation or prosecution identifies the subject of the record by name. The health care provider may release information by initiating contact with a county department, sheriff or police department or district attorney without receiving a request for release of the information. A person to whom a report or record is disclosed under this subdivision may not further disclose it, except to the persons, for the purposes and under the conditions specified in s. 48.981 (7).

12. To a school district employee or agent, with regard to patient health care records maintained by the school district by which he or she is employed or is an agent, if any of the following apply: a. The employee or agent has responsibility for preparation or storage of patient health care records. b. Access to the patient health care records is necessary to comply with a requirement in federal or state law.

13. To persons and entities under s. 940.22.

14. To a representative of the board on aging and long–term care, in accordance with s. 49.498 (5) (e).

15. To the department under s. 48.60 (5) (c), 50.02 (5) or 51.03 (2) or to a sheriff, police department or district attorney for purposes of investigation of a death reported under s. 48.60 (5) (a), 50.035 (5) (b), 50.04 (2t) (b) or 51.64 (2).

16. To a designated representative of the long–term care ombudsman under s. 16.009 (4), for the purpose of protecting and advocating the rights of an individual 60 years of age or older who resides in a long–term care facility, as specified in s. 16.009 (4) (b).

17. To the department under s. 50.53 (2).

18. Following the death of a patient, to a coroner, deputy coroner, medical examiner or medical examiner's assistant, for the purpose of completing a medical certificate under s. 69.18 (2) or investigating a death under s. 979.01 or 979.10. The health care provider may release information by initiating contact with the office of the coroner or medical examiner without receiving a request for release of the information and shall release information upon receipt of an oral or written request for the information from the coroner, deputy coroner, medical examiner or medical examiner's assistant. The recipient of any information under this subdivision shall keep the information confidential except as necessary to comply with s. 69.18, 979.01 or 979.10.

18m. If the subject of the patient health care records is a child or juvenile who has been placed in a foster home, treatment foster home, group home, residential care center for children and youth, or a secured correctional facility, including a placement under s. 48.205, 48.21, 938.205, or 938.21 or for whom placement in a foster home, treatment foster home, group home, residential care center for children and youth, or secured correctional facility is recommended under s. 48.33 (4), 48.425 (1) (g), 48.837 (4) (c), or 938.33 (3) or (4), to an agency directed by a court to prepare a court report under s. 48.33 (1), 48.424 (4) (b), 48.425 (3), 48.831 (2), 48.837 (4) (c), or 938.33 (1), to an agency responsible for preparing a court report under s. 48.365 (2g), 48.425 (1), 48.831 (2), 48.837 (4) (c), or 938.365 (2g), to an agency responsible for preparing a permanency plan under s. 48.355 (2e), 48.38, 48.43 (1) (c) or (5) (c), 48.63 (4) or (5) (c), 48.831 (4) (e), 938.355 (2e), or 938.38 regarding the child or juvenile, or to an agency that placed the child or juvenile or arranged for the placement of the child or juvenile in any of those placements and, by any of those agencies, to any other of those agencies and, by the agency that placed the child or juvenile or arranged for the placement of the child or juvenile in any of those placements, to the foster parent or treatment foster parent of the child or juvenile or the operator of the group home, residential care center for children and youth, or secured correctional facility in which the child or juvenile is placed, as provided in s. 48.371 or 938.371.

19. To an organ procurement organization by a hospital pursuant to s. 157.06 (5) (b) 1.

20. If the patient health care records do not contain information and the circumstances of the release do not provide information that would permit the identification of the patient.

21. To a prisoner's health care provider, the medical staff of a prison or jail in which a prisoner is confined, the receiving institution intake staff at a prison or jail to which a prisoner is being transferred or a person designated by a jailer to maintain

prisoner medical records, if the disclosure is made with respect to a prisoner's patient health care records under s. 302.388 or to the department of corrections if the disclosure is made with respect to a prisoner's patient health care records under s. 302.388 (4).

(b) Except as provided in s. 610.70 (3) and (5), unless authorized by a court of record, the recipient of any information under par. (a) shall keep the information confidential and may not disclose identifying information about the patient whose patient health care records are released.

(c) Notwithstanding sub. (1), patient health care records shall be released to appropriate examiners and facilities in accordance with ss. 971.17 (2) (e), (4) (c) and (7) (c), 980.03 (4) and 980.08 (3). The recipient of any information from the records shall keep the information confidential except as necessary to comply with s. 971.17 or ch. 980.

(d) For each release of patient health care records under this subsection, the health care provider shall record the name of the person or agency to which the records were released, the date and time of the release and the identification of the records released.

(3) REPORTS MADE WITHOUT INFORMED CONSENT. (a) Notwithstanding sub. (1), a physician who treats a patient whose physical or mental condition in the physician's judgment affects the patient's ability to exercise reasonable and ordinary control over a motor vehicle may report the patient's name and other information relevant to the condition to the department of transportation without the informed consent of the patient.

(b) Notwithstanding sub. (1), an optometrist who examines a patient whose vision in the optometrist's judgment affects the patient's ability to exercise reasonable and ordinary control over a motor vehicle may report the patient's name and other information relevant to the condition to the department of transportation without the informed consent of the patient.

(c) For each release of patient health care records under this subsection, the health care provider shall record the name of the person or agency to which the records were released, the date and time of the release and the identification of the records released.

History: 1979 c. 221; 1983 a. 398; 1985 a. 29,241,332,340; 1987 a. 40, 70, 127, 215,233,380,399; 1989 a. 31, 102,334,336; 1991 a. 39; 1993 a. 16, 27, 445, 479; 1995 a. 98, 169,417; 1997 a. 35, 114, 231, 272, 292, 305; 1999 a. 32, 78, 83, 114, 151; 2001 a. 38, 59, 69, 105.

Because under s. 905.04 (4) (f) there is no privilege for chemical tests for intoxication, results of a test taken for diagnostic purposes are admissible in an OMWI trial without patient approval. City of Muskego v. Godec, 167 Wis. 2d 536, 482 N.W.2d 79 (1992).

Patient billing records requested by the state in a fraud investigation under s. 46.25 [now s. 49.22] may be admitted into evidence under the exception to confidentiality found under sub. (2) (a) 3. State v. Allen, 200 Wis. 2d 301,546 N.W.2d 517 (1996).

This section does not restrict access to medical procedures and did not prevent a police officer from being present during an operation. State v. Thompson, 222 Wis. 2d 179,585 N.W.2d 905 (Ct. App. 1998).

The provision of confidentiality for patient health records is not an absolute bar to the release of information without the patient's informed consent. Sub. (2) provides numerous exceptions. Information of previous assaultive behavior by a nursing home resident was not protected by the physician–patient privilege and was subject to release by "lawful court order." Crawford v. Care Concepts, Inc. 2001 WI App 45, 243 Wis. 2d 119, 625 N.W.2d 876. Disclosure of patient health care records in Wisconsin. Lehner, WBB Aug. 1984.

Confidentiality of Medical Records. Meili. Wis. Law. Feb. 1995.

146.83 Access to patient health care records. (1) Except as provided in s. 51.30 or 146.82 (2), any patient or other person may, upon submitting a statement of informed consent:

(a) Inspect the health care records of a health care provider pertaining to that patient at any time during regular business hours, upon reasonable notice.

(b) Receive a copy of the patient's health care records upon payment of fees, as established by rule under sub. (3m).

(c) Receive a copy of the health care provider's X–ray reports or have the X–rays referred to another health care provider of the patient's choice upon payment of fees, as established by rule under sub. (3m).

(1m) (a) A patient's health care records shall be provided to the patient's health care provider upon request and, except as provided in s. 146.82 (2), with a statement of informed consent.

(b) The health care provider under par. (a) may be charged reasonable costs for the provision of the patient's health care records.

(2) The health care provider shall provide each patient with a statement paraphrasing the provisions of this section either upon admission to an inpatient health care facility, as defined in s. 50.135 (1), or upon the first provision of services by the health care provider.

(3) The health care provider shall note the time and date of each request by a patient or person authorized by the patient to inspect the patient's health care records, the name of the inspecting person, the time and date of inspection and identify the records released for inspection.

(3m) (a) The department shall, by rule, prescribe fees that are based on an approximation of actual costs. The fees, plus applicable tax, are the maximum amount that a health care provider may charge under sub. (1) (b) for duplicate patient health care records and under sub. (1) (c) for duplicate X–ray reports or the referral of X–rays to another health care provider of the patient's choice. The rule shall also permit the health care provider to charge for actual postage or other actual delivery costs. In determining the approximation of actual costs for the purposes of this subsection, the department may consider all of the following factors: 1. Operating expenses, such as wages, rent, utilities, and duplication equipment and supplies. 2. The varying cost of retrieval of records, based on the different media on which the records are maintained. 3. The cost of separating requested patient health care records from those that are not requested. 4. The cost of duplicating requested patient health care records. 5. The impact on costs of advances in technology.

(b) By January 1, 2006, and every 3 years thereafter, the department shall revise the rules under par. (a) to account for increases or decreases in actual costs.

(4) No person may do any of the following:

(a) Intentionally falsify a patient health care record.

(b) Conceal or withhold a patient health care record with intent to prevent or obstruct an investigation or prosecution or with intent to prevent its release to the patient, to his or her guardian appointed under ch. 880, to his or her health care provider with a statement of informed consent, or under the conditions specified in s. 146.82 (2), or to a person with a statement of informed consent.

(c) Intentionally destroy or damage records in order to prevent or obstruct an investigation or prosecution.

History: 1979 c. 221; 1989 a. 56; 1993 a. 27,445; 1997 a. 157; 2001 a. 109.

Sub. (1) (b) does not preclude certification of a class action in a suit to recover unreasonable fees charged for copies of health care records. Cruz v. All Saints Healthcare System, Inc. 2001 WI App 67, 242 Wis. 2d 432,625 N.W.2d 344.

146.835 Parents denied physical placement rights. A parent who has been denied periods of physical placement under s. 767.24 (4) (b) or 767.325 (4) may not have the rights of a parent or guardian under this chapter with respect to access to that child's patient health care records under s. 146.82 or 146.83.

History: 1987 a. 355.

146.836 Applicability. Sections 146.815, 146.82, 146.83 (4) and 146.835 apply to all patient health care records, including those on which written, drawn, printed, spoken, visual, electromagnetic or digital information is recorded or preserved, regardless of physical form or characteristics.

History: 1999 a. 78.

146.84 Violations related to patient health care records.

(1) ACTIONS FOR VIOLATIONS; DAMAGES; INJUNCTION. (a) A custodian of records incurs no liability under par. (bm) for the release of records in accordance with s. 146.82 or 146.83 while acting in good faith.

(b) Any person, including the state or any political subdivision of the state, who violates s. 146.82 or 146.83 in a manner that is knowing and willful shall be liable to any person injured as a result of the violation for actual damages to that person, exemplary damages of not more than $25,000 and costs and reasonable actual attorney fees.

(bm) Any person, including the state or any political subdivision of the state, who negligently violates s. 146.82 or 146.83 shall be liable to any person injured as a result of the violation for actual damages to that person, exemplary damages of not more than $1,000 and costs and reasonable actual attorney fees.

(c) An individual may bring an action to enjoin any violation of s. 146.82 or 146.83 or to compel compliance with s. 146.82 or 146.83 and may, in the same action, seek damages as provided in this subsection.

(2) PENALTIES. (a) Whoever does any of the following may be fined not more than $25,000 or imprisoned for not more than 9 months or both:

1. Requests or obtains confidential information under **s.** 146.82 or 146.83 (1) under false pretenses.

2. Discloses confidential information with knowledge that the disclosure is unlawful and is not reasonably necessary to protect another from harm.

3. Violates **s.** 146.83 (4).

(b) Whoever negligently discloses confidential information in violation of **s.** 146.82 is subject to a forfeiture of not more than $1,000 for each violation.

(c) Whoever intentionally discloses confidential information in violation of **s.** 146.82, knowing that the information is confidential, and discloses the information for pecuniary gain may be fined not more than $100,000 or imprisoned not more than 3 years and 6 months, or both.

(3) DISCIPLINE OF EMPLOYEES. Any person employed by the state or any political subdivision of the state who violates **s.** 146.82 or 146.83, except a health care provider that negligently violates **s.** 153.50 (6) (c), may be discharged or suspended without pay.

(4) EXCEPTIONS. This section does not apply to any of the following:

(a) Violations by a nursing facility, as defined under **s.** 49.498 (1) (i), of the right of a resident of the nursing facility to confidentiality of his or her patient health care records.

(b) Violations by a nursing home, as defined under s. 50.01 (3), of the right of a resident of the nursing home to confidentiality of his or her patient health care records.

History: 1991 a. 39; 1993 a. 445; 1999 a. 9, 79.

Sub. (1) (b) does not preclude certification of a class action in a suit to recover unreasonable fees charged for copies of health care records. Cruz v. All Saints Healthcare System, Inc. 2001 WI App 67, 242 Wis. 2d 432, 625 N.W.2d 344.

146.885 Acceptance of assignment for medicare. The department shall annually provide aging units, as defined in **s.** 46.82 (1) (a), with enrollment cards for and materials explaining the voluntary program that is specified in s. 71.55 (10) (b), for distribution to individuals who are eligible or potentially eligible for participation in the program. The state medical society shall supply the department with the enrollment cards and the explanatory materials for distribution under this section.

History: 1989 a. 294, 359; Stats. 1989 s. 146.885; 1991 a. 235.

146.89 Volunteer health care provider program. (1) In this section, "volunteer health care provider" means an individual who is licensed as a physician under cb. 448, dentist under ch. 447, registered nurse, practical nurse or nurse–midwife under ch. 441, optometrist under ch. 449 or physician assistant under ch. 448 or certified as a dietitian under subch. V of ch. 448 and who receives no income from the practice of that health care profession or who receives no income from the practice of that health care profession when providing services at the nonprofit agency specified under sub. (3).

(2) (a) A volunteer health care provider may participate under this section only if he or she submits a joint application with a nonprofit agency to the department of administration and that department approves the application. The department of administration shall provide application forms for use under this paragraph.

(b) The department of administration may send an application to the medical examining board for evaluation. The medical examining board shall evaluate any application submitted by the department of administration and return the application to the department of administration with the board's recommendation regarding approval.

(c) The department of administration shall notify the volunteer health care provider and the nonprofit agency of the department's decision to approve or disapprove the application.

(d) Approval of an application of a volunteer health care provider is valid for one year. If a volunteer health care provider wishes to renew approval, he or she shall submit a joint renewal application with a nonprofit agency to the department of administration. The department of administration shall provide renewal application forms that are developed by the department of health and family services and that include questions about the activities that the individual has undertaken as a volunteer health care provider in the previous 12 months.

(3) Any volunteer health care provider and nonprofit agency whose joint application is approved under sub. (2) shall meet the following applicable conditions:

(a) The volunteer health care provider shall provide services under par. (b) without charge at the nonprofit agency, if the joint application of the volunteer health care provider and the nonprofit agency has received approval under sub. (2) (a).

(b) The nonprofit agency may provide the following health care services:

1. Diagnostic tests.
2. Health education.
3. Information about available health care resources.
4. Office visits.
5. Patient advocacy.
6. Prescriptions.
7. Referrals to health care specialists.
8. Dental services, including simple tooth extractions and any necessary suturing related to the extractions, performed by a dentist who is a volunteer health provider.

(c) The nonprofit agency may not provide emergency medical services, hospitalization or surgery, except as provided in par. (b) 8.

(d) The nonprofit agency shall provide health care services primarily to low–income persons who are uninsured and who are not recipients of any of the following:

2. Medical assistance under subch. IV of ch. **49.**
3. Medicare under 42 USC 1395–1395ccc.

(4) Volunteer health care providers who provide services under this section are, for the provision of these services, state agents of the department of health and family services for purposes of **ss.** 165.25 (6), 893.82 (3) and 895.46.

History: 1989 a. 206; 1991 a. 269; 1993 a. 28, 490; 1995 a. 27 ss. 4378 to 4380, 9126 (19); 1997 a. 27, 57, 67; 1999 a. 23.

146.905 Reduction in fees prohibited. (1) Except as provided in sub. (2), a health care provider, as defined in s. 146.81 (1), that provides a service or **a** product to an individual with coverage under a disability insurance policy, as defined in **s.** 632.895 (1) (a), may not reduce or eliminate or offer to reduce or eliminate coinsurance or a deductible required under the terms of the disability insurance policy.

(2) Subsection (1) does not apply if payment of the total fee would impose an undue financial hardship on the individual receiving the service or product.

History: 1991 a. 250; 1995 a. 225.

146.91 Long–term care insurance. (1) In this section, "long–term care insurance" means insurance that provides coverage both for an extended stay in a nursing home and home health services for a person with a chronic condition. The insurance may also provide coverage for other services that assist the insured person in living outside a nursing home including but not limited to adult day care and continuing care retirement communities.

(2) The department, with the advice of the council on long–term care insurance, the office of the commissioner of insurance, the board on aging and long–term care and the department of employee trust funds, shall design a program that includes the following:

(a) Subsidizing premiums for persons purchasing long–term care insurance, based on the purchasers' ability to pay.

(b) Reinsuring by the state of policies issued in this state by long–term care insurers.

(c) Allowing persons to retain liquid assets in excess of the amounts specified in s. 49.47 (4) (b) 3g., 3m. and 3r., for purposes of medical assistance eligibility, if the persons purchase long–term care insurance.

(3) The department shall collect any data on health care costs and utilization that the department determines to be necessary to design the program under sub. (2).

(5) In designing the program, the department shall consult with the federal department of health and human services to determine the feasibility of procuring a waiver of federal law or regulations that will maximize use of federal medicaid funding for the program designed under sub. (2).

(6) The department, with the advice of the council on long–term care insurance, may examine use of tax incentives for the sale and purchase of long–term care insurance.

History: 1987 a. 27; 1989 a. 56

146.93 Primary health care program. (1) (a) From the appropriation under s. 20.435 (4) (gp), the department shall maintain a program for the provision of primary health care services based on the primary health care program in existence on June 30, 1987. The department may promulgate rules necessary to implement the program.

(c) The department shall seek to obtain a maximum of donated or reduced–rate health care services for the program and shall seek to identify and obtain a maximum of federal funds for the program.

(2) The program under sub.(1) (a) shall provide primary health care, including diagnostic laboratory and X–ray services, prescription drugs and nonprescription insulin and insulin syringes.

(3) The program under sub.(1) (a) shall be implemented in those counties with high unemployment rates and within which a maximum of donated or reduced–rate health care services can be obtained.

(4) The health care services of the program under sub.(1) (a) shall be provided to any individual residing in a county under sub.(3) who meets all of the following criteria:

(a) The individual is either unemployed or is employed less than 25 hours per week.

(b) The individual's family income is not greater than 150% of the federal poverty line, as defined under 42 USC 9902 (2).

(c) The individual does not have health insurance or other health care coverage and is unable to obtain health insurance or other health care coverage.

History: 1985 a. 29; 1987 a. 27; 1989 a. 31; 1999 a. 9.

146.95 Patient visitation. (1) DEFINITIONS. In this section:

(a) "Health care provider" has the meaning given in s. 155.01 (7).

(b) ''Inpatient health care facility" has the meaning given in s. 252.14 (1) (d).

(c) "Treatment facility'' has the meaning given in s. 51.01 (19).

(2) PATIENT–DESIGNATED VISITORS. ***Any*** individual who is 18 years of age or older may identify **to a** health care provider at an inpatient health care facility at any time, either orally or in writing, those persons with whom the individual wishes to visit while the individual is a patient at the inpatient health care facility. Except as provided in par.(b), no inpatient health care facility may deny visitation during the inpatient health care facility's regular visiting hours to any person identified by the individual.

(b) Subject to s. 51.61 for a treatment facility, an inpatient health care facility may deny visitation with a patient to any person if any of the following applies:

1. The inpatient health care facility or a health care provider determines that the patient may not receive any visitors.

2. The inpatient health care facility or a health care provider determines that the presence of the person would endanger the health or safety of the patient.

3. The inpatient health care facility determines that the presence of the person would interfere with the primary operations of the inpatient health care facility.

4. The patient has subsequently expressed in writing to a health care provider at the inpatient health care facility that the patient no longer wishes to visit with the person. Unless subd. 2. applies, an inpatient health care facility may not under this subdivision deny visitation to the person based on a claim by someone other than a health care provider that the patient has orally expressed that the patient no longer wishes to visit with that person.

History: 1997 a. 153.

146.96 Uniform claim processing form. Beginning no later than July 1, 2004, every health care provider, as defined in s. 146.81 (1), shall use the uniform claim processing form developed by the commissioner of insurance under s. 601.41 (9) (b) when submitting a claim to an insurer.

History: 2001 a. 109.

146.99 Assessments. The department shall, within 90 days after the commencement of each fiscal year, assess hospitals, as defined in s. 50.33 (2), a total of $1,500,000, in proportion to each hospital's respective gross private–pay patient revenues during the hospital's most recently concluded entire fiscal year. Each hospital shall pay its assessment on or before December 1 for the fiscal year. All payments of assessments shall be deposited in the appropriation under s. 20.435 (4) *(gp)*.

History: 1985 a. 29; 1987 a. 27; 1989 a. 31; 1991 a. 269; 1999 a. 9.

146.995 Reporting of wounds and burn injuries. this section:

(a) "Crime" has the meaning specified in s. 949.01 (1).

(b) "Inpatient health care facility" has the meaning specified in s. 50.135 (1).

(2) (a) **Any** person licensed, certified or registered by the state under ch. 441, 448 or 455 who treats a patient suffering from any of the following shall report in accordance with par.(b): 1. A gunshot wound. 2. Any wound other than a gunshot wound if the person has reasonable cause to believe that the wound occurred as a result of a crime. 3. Second–degree or 3rd–degree bums to at least 5% of the patient's body or, due to the inhalation of superheated air, swelling of the patient's larynx or a burn to the patient's upper respiratory tract, if the person has reasonable cause to believe that the bum occurred as a result of a crime.

(b) For any mandatory report under par.(a), the person shall report the patient's name and the type of wound or bum injury involved as soon as reasonably possible to the local police department or county sheriffs office for the area where the treatment is rendered.

(c) Any such person who intentionally fails to report as required under this subsection may be required to forfeit not more than $500.

(3) Any person reporting in good faith under sub.(2), and any inpatient health care facility that employs the person who reports, are immune from all civil and criminal liability that may result because of the report. In any proceeding, the good faith of any person reporting under this section shall be presumed.

(4) The reporting requirement under sub.(2) does not apply under any of the following circumstances:

(a) The patient is accompanied by a law enforcement officer at the time treatment is rendered.

(b) The patient's name and type of wound or bum injury have been previously reported under sub.(2).

(c) The wound is a gunshot wound and appears to have occurred at least 30 days prior to the time of treatment.

History: 1987 a. 233; 1991 a. 39; 1993 a. 27.

146.997 Health care worker protection. (1) DEFINITIONS. In this section:

(a) "Department" means the department of workforce development.

(b) "Disciplinary action" has the meaning given in s. 230.80 (2).

(c) "Health care facility" means a facility, as defined in s. 647.01 (4), or any hospital, nursing home, community–based residential facility, county home, county infirmary, county hospital, county mental health complex or other place licensed or approved by the department of health and family services under s. 49.70, 49.71, 49.72, 50.03, 50.35, 51.08 or 51.09 or a facility under s. 45.365, 51.05, 51.06, 233.40, 233.41, 233.42 or 252.10.

(d) "Health care provider" means any of the following:

1. A nurse licensed under ch. 441.

2. A chiropractor licensed under ch. 446.

3. A dentist licensed under ch. 447. 4. **A** physician, podiatrist, perfusionist, or physical therapist licensed under ch. 448.

NOTE: Subd. 4 is shown below as affected by 2001 Wis. Acts 70 and 89, 4–1–04. 4. A physician, podiatrist, perfusionist, physical therapist, or physical therapist assistant licensed under ch. 448.

5. ***An*** occupational therapist, occupational therapy assistant, physician assistant or respiratory care practitioner certified under ch. 448.

6. A dietician certified under subch. V of ch. 448.

7. An optometrist licensed under ch. 449.

8. A pharmacist licensed under ch. 450.

9. An acupuncturist certified under ch. 451.

10. A psychologist licensed under ch. 455.

11. A social worker, marriage and family therapist or professional counselor certified under ch. 457.

12. A speech–language pathologist or audiologist licensed under subch. II of ch. 459 or a speech and language pathologist licensed by the department of public instruction.

13. A massage therapist or bodyworker issued a certificate under ch. 460.

NOTE: Subd. 13. is shown as amended eff. 3–1-03 by 2001 Wis. Act 74. Prior to 3–1–03 it reads: 13. A massage therapist or bodywnrker issued a license of registration under subch. XI of ch. 440.

14. An emergency medical technician licensed under **s.** 146.50 (5) or a first responder.

15. A partnership of any providers specified under subds. 1. to 14.

16. A corporation or limited liability company of any providers specified under subds. 1. to 14. that provides health care services.

17. An operational cooperative sickness care plan organized under **ss.** 185.981 to 185.985 that directly provides services through salaried employees in its own facility.

18. A hospice licensed under subch. IV of ch. 50 19. A rural medical center, as defined in **s.** 50.50 (11). 20. A home health agency, as defined in **s.** 50.49 (1) (a).

(2) REPORTING PROTECTED. (a) Any employee of a health care facility or of a health care provider who is aware of any information, the disclosure of which is not expressly prohibited by any state law or rule or any federal law or regulation, that would lead a reasonable person to believe any of the following may report that information to any agency, as defined in **s.** 111.32 (6) (a), of the state; to any professionally recognized accrediting or standard– setting body that has accredited, certified or otherwise approved the health care facility or health care provider; to any officer or director of the health care facility or health care provider; or to any employee of the health care facility or health care provider who is in a supervisory capacity or in a position to take corrective action:

1. That the health care facility or health care provider or any employee of the health care facility or health care provider has violated any state law or rule or federal law or regulation.

2. That there exists any situation in which the quality of any health care service provided by the health care facility or health care provider or by any employee of the health care facility or health care provider violates any standard established by any state law or rule or federal law or regulation or any clinical or ethical standard established by a professionally recognized accrediting or standard–setting body and poses a potential risk to public health or safety.

(b) An agency or accrediting or standard–setting body that receives a report under par.(a) shall, within 5 days after receiving the report, notify the health care facility or health provider that is the subject of the report, in writing, that a report alleging a violation specified in par.(a) 1. or 2. has been received and provide the health care facility or health care provider with a written summary of the contents of the report, unless the agency, or accrediting or standard–setting body determines that providing that notification and summary would jeopardize an ongoing investigation of a violation alleged in the report. The notification and summary may not disclose the identity of the person who made the report.

(c) Any employee of a health care facility or health care provider may initiate, participate in or testify in any action or proceeding in which a violation specified in par.(a) 1. or 2. is alleged.

(d) Any employee of a health care facility or health care provider may provide any information relating to an alleged violation specified in par.(a) 1. or 2. to any legislator or legislative committee.

(3) DISCIPLINARY ACTION PROHIBITED. (a) No health care facility or health care provider and no employee of a health care facility or health care provider may take disciplinary action against, or threaten to take disciplinary action against, any person because the person reported in good faith any information under sub.(2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub.(2) (c) or provided in good faith any information under sub.(2) (d) or because the health care facility, health care provider or employee believes that the person reported in good faith any information under sub.(2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub.(2) (c) or provided in good faith any information under sub.(2) (d).

(b) No health care facility or health care provider and no employee of a health care facility or health care provider may take disciplinary action against, or threaten to take disciplinary action against, any person on whose behalf another person reported in good faith any information under sub.(2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub.(2) (c) or provided in good faith any information under sub.(2) (d) or because the health care facility, health care provider or employee believes that another person reported in good faith any information under sub.(2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub.(2) (c) or provided in good faith any information under sub.(2) (d) on that person's behalf.

(c) For purposes of pars.(a) and (b), an employee is not acting in good faith if the employee reports any information under sub.(2) (a) that the employee knows or should know is false or misleading, initiates, participates in or testifies in any action or proceeding under sub.(2) (c) based on information that the employee knows or should know is false or misleading or provides any information under sub.(2) (d) that the employee knows or should know is false or misleading.

(4) ENFORCEMENT. (a) Subject to par.(b), any employee of a health care facility or health care provider who is subjected to disciplinary action, or who is threatened with disciplinary action, in violation of sub.(3) may file a complaint with the department under **s.** 106.54 (6). If the department finds that a violation of sub.(3) has been committed, the department may take such action under **s.** 111.39 as will effectuate the purpose of this section.

(b) Any employee of a health care facility operated by an agency, as defined in **s.** 111.32 (6) (a), of the state who is subjected to disciplinary action, or who is threatened with disciplinary action, in violation of sub.(3) may file a complaint with the personnel commission under **s.** 230.45 (1) (L). If the personnel commission finds that a violation of sub.(3) has been committed, the personnel commission may take such action under **s.** 111.39 as will effectuate the purpose of this section.

(c) Section 111.322 (2m) applies to a disciplinary action arising in connection with any proceeding under par.(a) or (b).

(5) CIVIL PENALTY. Any health care facility or health care provider and any employee of a health care facility or health care provider who takes disciplinary action against, or who threatens to take disciplinary action against, any person in violation of sub.(3) may be required to forfeit not more than $1,000 for a first violation, not more than $5,000 for a violation committed within 12 months of a previous violation and not more than $10,000 for a violation committed within 12 months of 2 or more previous violations. The 12–month period shall be measured by using the dates of the violations that resulted in convictions.

(6) POSTING OF NOTICE. Each health care facility and health care provider shall post, in one or more conspicuous places where notices to employees are customarily posted, a notice in a form approved by the department setting forth employees' rights under this section. Any health care facility or health care provider that violates this subsection shall forfeit not more than $100 for each offense.

History: 1999 a. 176, 186; 2001 a. 38, 70, 74, 89, 105.

CHAPTER 440
DEPARTMENT OF REGULATION AND LICENSING

SUBCHAPTER I
GENERAL PROVISIONS

Cross reference: See **also** RL, Wis. adm. code.

SUBCHAPTER I
GENERAL PROVISIONS

440.01 Definitions. (1) In chs. 440 to 480, unless the context requires otherwise:

(a) "Department" means the department of regulation and licensing.

(am) "Financial institution" has the meaning given in **s.** 705.01 (3).

(b) "Grant" means the substantive act of an examining board, section of an examining board, affiliated credentialing board or the department of approving the applicant for credentialing and the preparing, executing, signing or sealing of the credentialing.

(c) "Issue" means the procedural act of the department of transmitting the credential to the person who is credentialed.

(d) "Limit", when used in reference to limiting a credential, means to impose conditions and requirements upon the holder of the credential, and to restrict the scope of the holder's practice.

(dm) "Renewal date" means the date on which a credential expires and before which it must be renewed for the holder to maintain without interruption the rights, privileges and authority conferred by the credential.

(e) "Reprimand" means to publicly warn the holder of a credential.

(f) "Revoke", when used in reference to revoking a credential, means to completely and absolutely terminate the credential and all rights, privileges and authority previously conferred by the credential.

(g) "Secretary" means the secretary of regulation and licensing.

(h) "Suspend", when used in reference to suspending a credential, means to completely and absolutely withdraw and withhold for a period of time all rights, privileges and authority previously conferred by the credential.

(2) In this subchapter: (a) "Credential" means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 480.

(b) "Credentialing" means the acts of an examining board, section of an examining board, affiliated credentialing board or the department that relate to granting, issuing, denying, limiting, suspending or revoking a credential.

(bm) "Credentialing hoard" means an examining board or an affiliated credentialing board in the department.

(c) "Examining board" includes the board of nursing.

(cs) "Minority group member" has the meaning given in s. 560.036 (1) (f).

(cv) "Psychotherapy" has the meaning given in s. 457.01 (8m).

(d) "Reciprocal credential" means a credential granted by an examining board, section of an examining board, affiliated credentialing board or the department to an applicant who holds a credential issued by a governmental authority in a jurisdiction outside this state authorizing or qualifying the applicant to perform acts that are substantially the same as those acts authorized by the credential granted by the examining board, section of the examining board, affiliated credentialing board or department.

History: 1977 c. 418; 1979 c. 34; 1979 c. 175 s. 53; 1979 c. 221 **s.** 2202 (45); 1991 a. 39; 1993 a. 102, **107;** 1995 a. 233, 333; 1997 a. 35 s. 448; 1997 a. 237 ss. 532, 539m; 1999 a. 9 **s.** 2915; 2001 a. **80.**

Procedural due process and the separation of functions in state occupational licensing agencies. 1974 WLR 833.

440.02 Bonds. Members of the staff of the department who are assigned by the secretary to collect moneys shall be bonded in an amount equal to the total receipts of the department for any month.

440.03 General duties and powers of the department.

(1) The department may promulgate rules defining uniform procedures to be used by the department, the real estate board, the real estate appraisers board, and all examining boards and affiliated credentialing boards attached to the department or **an** examining board, for receiving, filing and investigating complaints, for commencing disciplinary proceedings and for conducting hearings.

(1m) The department may promulgate rules specifying the number of business days within which the department or any examining board or affiliated credentialing board in the department must review and make a determination on an application for a permit, as defined in s. 560.41 (2), that is issued under chs. 440 to 480.

(2) The department may provide examination development services, consultation and technical assistance to other state agencies, federal agencies, counties, cities, villages, towns, national or regional organizations of state credentialing agencies, similar credentialing agencies in other states, national or regional accrediting associations, and nonprofit organizations. The department may charge a fee sufficient to reimburse the department for the costs of providing such services. In this subsection, "nonprofit organization" means a nonprofit corporation **as** defined in s. 181.0103 (17), and an organization exempt from tax under 26 USC 501.

(3) If the secretary reorganizes the department, no modification may be made in the powers and responsibilities of the examining boards or affiliated credentialing boards attached **to** the department or an examining board under **s.** 15.405 or 15.406.

(3m) The department may investigate complaints made against a person who has been issued a credential under chs. 440 to 480.

(3q) Notwithstanding sub.(3m), the department of regulation and licensing shall investigate any report that it receives under **s.** 146.40 (4r) (am) 2. or (em).

(4) The department may issue subpoenas for the attendance of witnesses and the production of documents or other materials prior to the commencement of disciplinary proceedings.

(5) The department may investigate allegations of negligence by physicians licensed to practice medicine and surgery under ch. 448.

(5m) The department shall maintain a toll–free telephone number to receive reports of allegations of unprofessional conduct, negligence or misconduct involving a physician licensed under subch. II of ch. 448. The department shall publicize the toll– free telephone number and the investigative powers and duties of the department and the medical examining board as widely as possible in the state, including in hospitals, clinics, medical offices and other health care facilities.

(6) The department shall have access to any information contained in the reports filed with the medical examining board, an affiliated credentialing board attached to the medical examining board and the board of nursing under **s.** 655.045, as created by 1985 Wisconsin Act 29, and **s.** 655.26.

(7) The department shall establish the style, content and format of all credentials and of all forms for applying for any credential issued or renewed under chs. 440 to 480. All forms shall include a place for the information required under sub. (11m) (a). Upon request of any person who holds a credential and payment of a $10 fee, the department may issue a wall certificate signed by the governor.

(7m) The department may promulgate rules that establish procedures for submitting an application for a credential or credential renewal by electronic transmission. Any rules promulgated under this subsection shall specify procedures for complying with any requirement that a fee be submitted with the application. The rules may also waive any requirement in chs. 440 to 480 that an application submitted to the department, an examining board or an affiliated credentialing board be executed, verified, signed, sworn or made under oath, notwithstanding ss. 440.26 (2) (b), 440.42 (2) (intro.), 440.91 (2) (intro.), 443.06 (1) (a), 443.10 (2) (a), 445.04 (2), 445.08 (4), 445.095 (1) (a), 448.05 (7), 450.09 (1) (a), 452.10 (1) and 480.08 (2m).

(8) The department may promulgate rules requiring holders of certain credentials to do any of the following:

(a) Display the credential in a conspicuous place in the holder's office or place of practice or business, **if** the holder is not required by statute to do so.

(b) Post a notice in a conspicuous place in the holder's office or place of practice **or** business describing the procedures for filing a complaint against the holder.

(9) The department shall include all of the following with each biennial budget request that it makes under **s.** 16.42:

(a) A recalculation of the administrative and enforcement costs of the department that are attributable to the regulation of each occupation or business under chs. 440 to 480 and that are included in the budget request.

(b) **A** recommended change to each fee specified under **s.** 440.05 (1) for an initial credential for which an examination is not required, under s. 440.05 (2) for a reciprocal credential and under s. 440.08 (2) (a) for a credential renewal if the change is necessary to reflect the approximate administrative and enforcement costs of the department that are attributable to the regulation of the particular occupation or business during the period in which the initial or reciprocal credential or credential renewal is in effect and, for purposes of the recommended change to each fee specified under **s.** 440.08 (2) (a) for a credential renewal, to reflect an estimate of any additional moneys available for the department's general program operations, during the budget period to which the biennial budget request applies, as a result of appropriation transfers that have been or are estimated to be made under **s.** 20.165 (1) (i) prior to and during that budget period.

(11) The department shall cooperate with the department of health and family services to develop a program to use voluntary, uncompensated services of licensed or certified professionals to assist the department of health and family services in the evaluation of community mental health programs in exchange for continuing education credits for the professionals under ss. 448.40 (2) (e) and 455.065 (5).

(11m) (a) Each application form for a credential issued or renewed under chs. 440 to 480 shall provide a space for the department to require each of the following, other than an individual who does not have a social security number and who submits a statement made or subscribed under oath or affirmation as required under par. (am), to provide his or her social security number:

1. An applicant for an initial credential or credential renewal. If the applicant is not an individual, the department shall require the applicant to provide its federal employer identification number.

2. *An* applicant for reinstatement of an inactive license under **s.** 452.12 (6) (e).

(am) If an applicant specified in par. (a) 1. or 2. is an individual who does not have a social security number, the applicant shall submit a statement made or subscribed under oath that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of workforce development. A credential or license issued in reliance upon a false statement submitted under this paragraph is invalid.

(b) The department shall deny an application for an initial credential or deny an application for credential renewal or for reinstatement of an inactive license under **s.** 452.12 (6) (e) if any information required under par. (a) is not included in the application form or, in the case of an applicant who is an individual and who does not have a social security number, if the statement required under par. (am) is not included with the application form.

(c) The department of regulation and licensing may not disclose a social security number obtained under par. (a) to any person except the coordinated licensure information system under s. 441.50 (7); the department of workforce development for purposes of administering **s.** 49.22; and, for a social security number obtained under par. (a) 1., the department of revenue for the sole purpose of requesting certifications under **s.** 73.0301.

(12m) The department of regulation and licensing shall cooperate with the departments of justice and health and family services in developing and maintaining a computer linkup to provide access to information regarding the current status of a credential issued to any person by the department of regulation and licensing, including whether that credential has been restricted in any way.

(13) The department may conduct an investigation to determine whether an applicant for a credential issued under chs. 440 to 480 satisfies any of the eligibility requirements specified for the credential, including whether the applicant does not have an arrest or conviction record. In conducting an investigation under this subsection, the department may require an applicant to provide any information that is necessary for the investigation or, for the purpose *of* obtaining information related to an arrest or conviction record of an applicant, to complete forms provided by the department of justice or the federal bureau of investigation. The department shall charge the applicant any fees, costs or other expenses incurred in conducting the investigation under this subsection.

(14) (a) **1.** The department shall grant a certificate of registration as a music therapist to a person if all of the following apply:

a. The person is certified, registered or accredited as a music therapist by the Certification Board for Music Therapists, National Music Therapy Registry, American Music Therapy Association or by another national organization that certifies, registers or accredits music therapists.

b. The organization that certified. registered or accredited the person under subd. 1. a. is approved by the department.

c. The person pays the fee specified in s. 440.05 (1) and files with the department evidence satisfactory to the department that he or she is certified, registered or accredited as required under subd. 1. a.

2. The department shall grant a certificate of registration as an art therapist to a person if all of the following apply:

a. The person is certified, registered or accredited **as** an art therapist by the Art Therapy Credentials Board or by another national organization that certifies, registers or accredits art therapists.

b. The organization that certified, registered or accredited the person under subd. 2. a. is approved by the department.

c. The person pays the fee specified in **s.** 440.05 (1) and files with the department evidence satisfactory to the department that he or she is certified, registered or accredited as required under subd. 2. a.

3. The department shall grant a certificate of registration as a dance therapist to a person if all of the following apply:

a. The person is certified, registered or accredited as a dance therapist by the American Dance Therapy Association or by another national organization that certifies, registers or accredits dance therapists.

b. The organization that certified, registered or accredited the person under subd. 3. a. is approved by the department.

c. The person pays the fee specified in s. 440.05 (1) and files with the department evidence satisfactory to the department that he or she is certified, registered or accredited as required under subd. 3. a.

(am) The department may promulgate rules that establish requirements for granting a license to practice psychotherapy to a person who is registered under par.(a). Rules promulgated under this paragraph shall establish requirements for obtaining such a license that are comparable to the requirements for obtaining a clinical social worker, marriage and family therapist, or professional counselor license under ch. 457. If the department promulgates rules under this paragraph, the department shall grant a license under this paragraph to a person registered under par.(a) who pays the fee specified in s. 440.05 (1) and provides evidence satisfactory to the department that he or she satisfies the requirements established in the rules.

(b) A person who is registered under par.(a) shall notify the department in writing within 30 days if an organization specified in par.(a) 1. a., 2. a. or 3. a. revokes the person's certification, registration, or accreditation specified in par.(a) 1. a., 2. a., or 3. a. The department shall revoke a certificate of registration granted under par.(a) if such an organization revokes such a certification, registration, or accreditation. If the department revokes the certificate of registration of a person who also holds a license granted under the rules promulgated under par.(am), the department shall also revoke the license.

(c) The renewal dates for certificates granted under par.(a) and licenses granted under par.(am) are specified in s. 440.08 (2) (a). Renewal applications shall be submitted to the department on a form provided by the department and shall include the renewal fee specified in s. 440.08 (2) (a) and evidence satisfactory to the department that the person's certification, registration, or accreditation specified in par.(a) 1. a., **2.** a. or 3. a. has not been revoked.

(d) The department shall promulgate rules that specify the services within the scope of practice of music, art, or dance therapy that a person who is registered under par.(a) is qualified to perform. The rules may not allow a person registered under par.(a) to perform psychotherapy unless the person is granted a license under the rules promulgated under par.(am).

Cross reference: See also chs. RL 140,141, and 142, Wis. adm **code.**

(e) Subject to the rules promulgated under sub.(1), the department may make investigations and conduct hearings to determine whether a violation **of** this subsection **or** any rule promulgated under par.(d) has occurred and may reprimand a person who is registered under par.(a) or holds a license granted under the rules promulgated under par.(am) or may deny, limit, suspend, or revoke a certificate of registration granted under par.(a) or a license granted under the rules promulgated under par.(am) if the department finds that the applicant or certificate or license holder has violated this subsection or any rule promulgated under par.(d).

(f) A person who is registered under par.(a) or holds a license granted under the rules promulgated under par.(am) who violates this subsection or any rule promulgated under par.(d) may be fined not more than $200 or imprisoned for not more than 6 months or both.

(15) The department shall promulgate rules that establish the fees specified in ss. 440.05 (10) and 440.08 (2) (d).

(16) Annually, the department shall distribute the form developed by the medical and optometry examining boards under 2001 Wisconsin Act 16, section 9143 (3c), to all school districts and charter schools that offer kindergarten, to be used by pupils to provide evidence of eye examinations under s. 118.135.

History: 1977 **c.** 418 **ss.** 24, 792; 1979 **c.** 34, 221, 337; 1981 **c.** 94; 1985 a. 29, 340; 1989 a. 31,340: 1991 a. 39: 1993 a. 16, 102, 107, 443, 445, 490, 491; 1995 a. 27 **ss.** 6471g, 6472j, 9126 (19); 1995 a. 233; 1997 a. 27, 75, 79; 1997 a. 191 ss. 312,313, 318; 1997 a. 231, 237; 1997 a. 261 **ss.** 1 m **4,** 7, 10, 13; 1997 a. 311; 1999 a. 9, 32; 2001 a. 16, 66, 80.

Cross reference: See also **RL, Wis. adm. code.**

440.035 General duties of examining boards and affiliated credentialing boards. Each examining board or affiliated credentialing board attached to the department or an examining board shall:

(1) Independently exercise its powers, duties and functions prescribed by law with regard to rule–making, credentialing and regulation.

(2) Be the supervising authority of all personnel, other than shared personnel, engaged in the review, investigation or handling of information regarding qualifications of applicants for credentials, examination questions and answers, accreditation, related investigations and disciplinary matters affecting persons who are credentialed by the examining board or affiliated credentialing board, or in the establishing of regulatory policy or the exercise of administrative discretion with regard to the qualifications or discipline of applicants or persons who are credentialed by the examining board, affiliated credentialing board or accreditation.

(3) Maintain, in conjunction with their operations, in central locations designated by the department, all records pertaining to the functions independently retained by them.

(4) Compile and keep current a register of the names and addresses of all persons who are credentialed to be retained by the department and which shall be available for public inspection during the times specified in s. 230.35 (4) (a). The department may also make the register available to the public by electronic transmission.

History: 1977 **c.** 418 **ss.** 25, 793,929 (41); 1979 **c.** 32 **s.** 92 (1); 1979 **c.** 34; 1989 a. 56 s. 259; 1991 a. 39; 1993 a. 107; 1991 a. 21, 191,237.

440.04 Duties of the secretary. The secretary shall:

(1) Centralize, at the capital and in such district offices as the operations of the department and the attached examining boards and affiliated credentialing boards require, the routine housekeeping functions required by the department, the examining boards and the affiliated credentialing boards.

(2) Provide the bookkeeping, payroll, accounting and personnel advisory services required by the department and the legal services, except for representation in court proceedings and the preparation of formal legal opinions, required by the attached examining boards and affiliated credentialing boards.

(5) With the advice of the examining boards or affiliated credentialing boards:

(a) Provide the department with such supplies, equipment, office space and meeting facilities as are required for the efficient operation of the department.

(b) Make all arrangements for meetings, hearings and examinations.

(c) Provide such other services as the examining boards or affiliated credentialing boards request.

(6) Appoint outside the classified service an administrator for any division established in the department and a director for any bureau established in the department as authorized in s. 230.08 (2). The secretary may assign any bureau director appointed in accordance with this subsection to serve concurrently as a bureau director and a division administrator.

(7) Unless otherwise specified in chs. 440 to 480, provide examination development, administration, research and evaluation services as required.

(8) Collect data related to the registration of speech–language pathologists and audiologists under subch. III of ch. 459 and, on January 15, 1993, report the data and recommendations on whether the licensure of speech–language pathologists and audiologists under subch. II of ch. 459 is appropriate to the chief clerk of each house of the legislature for distribution in the manner provided under s. 13.172 (2).

(9) Annually prepare and submit a report to the legislature under s. 13.172 (2) on the number of minority group members who applied for licensure as a certified public accountant under ch. 442, the number who passed the examination required for licensure as a certified public accountant and the number who were issued a certified public accountant license under ch. 442, during the preceding year.

History: 1977 **c.** 418 s. **26;** 1979 **c.** 34; 1981 **c.** 20; 1985 a. 29; 1987 a. 27; 1989 **a.** 316; 1991 **a.** 39; 1993 a. 102,107; 1995 a. 333.

440.042 Advisory committees. (1) The secretary may appoint persons or advisory committees to advise the department and the boards, examining boards and affiliated credentialing boards in the department on matters relating to the regulation of credential holders. The secretary shall appoint an advisory committee to advise the department on matters relating to carrying out the duties specified in s. 440.982 and making investigations, conducting hearings and taking disciplinary action under s. 440.986. A person or an advisory committee member appointed under this subsection shall serve without compensation, but may be reimbursed for his or her actual and necessary expenses incurred in the performance of his or her duties.

(2) Any person who in good faith testifies before the department or any examining board, affiliated credentialing board or board in the department or otherwise provides the department or any examining board, affiliated credentialing board or board in the department with advice or information on a matter relating to the regulation of a person holding a credential is immune from civil liability for his or her acts or omissions in testifying or otherwise providing such advice or information. The good faith of any person specified in this subsection shall be presumed in any civil action and an allegation that such a person has not acted in good faith must be proven by clear and convincing evidence.

History: 1993 a. 16 ss. 3269,3299; 1993 a. 107; 1997 a. 156; 1999 a. 32.

440.045 Disputes. Any dispute between an examining board or an affiliated credentialing board and the secretary shall be arbitrated by the governor or the governor's designee after consultation with the disputants.

History: 1977 c. 418 s. 27; 1979 c. 34; 1993 a. 107.

The relationship between the department, cosmetology examining board, and governor is discussed. 70 Atty. Gen. 172.

440.05 Standard fees. The following standard fees apply to all initial credentials, except as provided in ss. 440.42, 440.43, 440.44, 440.51, 444.03, 444.05, 444.11, 447.04 (2) (c) 2., 449.17, 449.18 and 459.46:

(1) Initial credential: $53. Each applicant for an initial credential shall pay the initial credential fee to the department when the application materials for the initial credential are submitted to the department.

(b) Examination: If an examination is required, the applicant shall pay an examination fee to the department. If the department prepares, administers, or grades the examination, the fee to the department shall be an amount equal to the department's best estimate of the actual cost of preparing, administering, or grading the examination. If the department approves an examination prepared, administered, and graded by a test service provider, the fee to the department shall be an amount equal to the department's best estimate of the actual cost of approving the examination, including selecting, evaluating, and reviewing the examination.

(2) Reciprocal credential, including any credential described in s. 440.01 (2) (d) and any credential that permits temporary practice in this state in whole or in part because the person holds a credential in another jurisdiction: The applicable credential renewal fee under s. 440.08 (2) (a) and, if an examination is required, an examination fee under sub. (1).

(6) Apprentice, journeyman, student or other temporary credential, granted pending completion of education, apprenticeship or examination requirements: $10.

(7) Replacement of lost credential, name or address change on credential, issuance of duplicate credential or transfer of credential: $10.

(9) Endorsement of persons who are credentialed to other states: $10.

(10) Expedited service: If an applicant for a credential requests that the department process an application on an expedited basis, the applicant shall pay a service fee that is equal to the department's best estimate of the cost of processing the application on an expedited basis, including the cost of providing counter or other special handling services.

History: 1977 c. 29,418; 1979 c. 34; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1983 a. 27; 1985 a. 29; 1987 a. 264,265, 329, 399, 403; 1989 a. 31, 229, 307, 316, 336.340.341.359; 1991 a. 39, 269, 278, 315; 1993 a. 16; 1995 a. 27; 1997 a. 27.96; 1999 a. 9; 2001 a. 16.

Cross reference: See also ch. RL 4, Wis. adm. code.

440.055 Credit card payments. (2) If the department permits the payment of a fee with use of a credit card, the department shall charge a credit card service charge for each transaction. The credit card service charge shall be in addition to the fee that is being paid with the credit card and shall be sufficient to pay the costs to the department for providing this service to persons who request it, including the cost of any services for which the department contracts under sub. (3).

(3) The department may contract for services relating to the payment of fees by credit card under this section.

History: 1995 a. 27; 1999 a. 9.

440.06 Refunds and reexaminations. The secretary may establish uniform procedures for refunds of fees paid under s. 440.05 or 440.08 and uniform procedures and fees for reexaminations under chs. 440 to 480.

History: 1977 c. 418; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1991 a. 39; 1993 a. 102.

Cross reference: See also ch. RL 4, Wis. adm. code.

440.07 Examination standards and services. (1) In addition to the standards specified in chs. 440 to 480, examinations for credentials shall reasonably relate to the skills likely to be needed for an applicant to practice in this state at the time of examination and shall seek to determine the applicant's preparedness to exercise the skills.

(2) The department, examining board or affiliated credentialing board having authority to credential applicants may do any of the following:

(a) Prepare, administer and grade examinations.

(b) Approve, in whole or in part, an examination prepared, administered and graded by a test service provider.

(3) The department may charge a fee to an applicant for a credential who fails an examination required for the credential and requests a review of his or her examination results. The fee shall be based on the cost of the review. No fee may be charged for the review unless the amount of the fee or the procedure for determining the amount of the fee is specified in rules promulgated by the department.

History: 1987 a. 27; 1991 a. 39; 1993 a. 102, 107.

Cross reference: See also ch. RL 4, Wis. adm code. Department of Regulation and Licensing test scores were subject to disclosure under the open records law. Munroe v. Braatz, 201 Wis. 2d 442,549 N.W.2d 452 (Ct. App. 1996).

440.08 Credential renewal. (1) NOTICE OF RENEWAL. The department shall give a notice of renewal to each holder of a credential at least 30 days prior to the renewal date of the credential. Notice may be mailed to the last address provided to the department by the credential holder or may be given by electronic transmission. Failure to receive a notice of renewal is not a defense in any disciplinary proceeding against the holder or in any proceeding against the holder for practicing without a credential. Failure to receive a notice of renewal does not relieve the holder from the obligation to pay a penalty for late renewal under sub. (3).

(2) RENEWAL DATES, FEES AND APPLICATIONS. (a) Except as provided in par. (b) and in ss. 440.51, 442.04, 444.03, 444.05, 444.11, 448.065, 447.04 (2) (c) 2., 449.17, 449.18 and 459.46, the renewal dates and renewal fees for credentials are as follows:

1. Accountant, certified public: January 1 of each even–numbered year; $59.

3. Accounting corporation or partnership: January 1 of each even–numbered year; $56.

4. Acupuncturist: July 1 of each odd–numbered year; $70.

4m. Advanced practice nurse prescriber: October 1 of each even–numbered year; $73.

5. Aesthetician: July 1 of each odd–numbered year; $87.

6. Aesthetics establishment: July 1 of each odd–numbered year; $70.

7. Aesthetics instructor: July 1 of each odd–numbered year; $70.

8. Aesthetics school: July 1 of each odd–numbered year; $115.

9. Aesthetics specialty school: July 1 of each odd–numbered year; $53.

11. Appraiser, real estate, certified general: January 1 of each even–numbered year; $162.

11m. Appraiser, real estate, certified residential: January 1 of each even–numbered year; $167.

12. Appraiser, real estate, licensed: January 1 of each even–numbered year; $185.

13. Architect: August 1 of each even–numbered year; $60.

14. Architectural or engineering firm, partnership or corporation: February 1 of each even–numbered year; $70.

14f. Athletic trainer: July 1 of each even–numbered year; $53.

14g. Auction company: January 1 of each odd–numbered year; $56.

14r. Auctioneer: January 1 of each odd–numbered year; $174.

15. Audiologist: February 1 of each odd–numbered year; $106.

16. Barbering or cosmetology establishment: July 1 of each odd–numbered year; $56.

17. Barbering or cosmetology instructor: July 1 of each odd–numbered year; $91.
18. Barbering or cosmetology manager: July 1 of each odd–numbered year; $71.
19. Barbering or cosmetology school: July 1 of each odd–numbered year; $138.
20. Barber or cosmetologist: July 1 of each odd–numbered year; $63.
21. Cemetery authority: January 1 of each odd–numbered year; $343.
22. Cemetery preneed seller: January 1 of each odd–numbered year; $61.
23. Cemetery salesperson: January 1 of each odd–numbered year; $90.
23m. Charitable organization: August 1 of each year; $15.
24. Chiropractor: January 1 of each odd–numbered year; $168.
25. Dental hygienist: October 1 of each odd–numbered year; $57.
26. Dentist: October 1 of each odd–numbered year; $131.
26m. Dentist, faculty member: October 1 of each odd–numbered year; $131.
27. Designer of engineering systems: February 1 of each even–numbered year; $58.
27m. Dietitian: November 1 of each even–numbered year; $56.
28. Drug distributor: June 1 of each even–numbered year; $70.
29. Drug manufacturer: June 1 of each even–numbered year; $70.
30. Electrologist: July 1 of each odd–numbered year; $76.
31. Electrology establishment: July 1 of each odd–numbered year; $56.
32. Electrology instructor: July 1 of each odd–numbered year; $86.
33. Electrology school: July 1 of each odd–numbered year; $71.
34. Electrology specialty school: July 1 of each odd–numbered year; $53.
35. Engineer, professional: August 1 of each even–numbered year; $58.
35m. Fund–raising counsel: September 1 of each even–numbered year; $53.
36. Funeral director: January 1 of each even–numbered year; $135.
37. Funeral establishment: June 1 of each odd–numbered year; $56.
38. Hearing instrument specialist: February 1 of each odd–numbered year; $106.
38g. Home inspector: January 1 of each odd–numbered year; $53.
38m. Landscape architect: August 1 of each even–numbered year; $56.
39. Land surveyor: February 1 of each even–numbered year; $77.
42. Manicuring establishment: July 1 of each odd–numbered year; $53.
43. Manicuring instructor: July 1 of each odd–numbered year; $53.
44. Manicuring school: July 1 of each odd–numbered year; $118.
45. Manicuring specialty school: July 1 of each odd–numbered year; $53.
46. Manicurist: July 1 of each odd–numbered year; $133.
46m. Marriage and family therapist: July 1 of each odd–numbered year; $84.
46r. Massage therapist or bodyworker: March 1 of each odd–numbered year; $53.

NOTE: Subd. 46r. is created eff. 3–1-03 by 2001 Wis. Act 74.

48. Nurse, licensed practical: May 1 of each odd–numbered year; $69.
49. Nurse, registered: March 1 of each even–numbered year; $66.
50. Nurse–midwife: March 1 of each even–numbered year; $70.
51. Nursing home administrator: July 1 of each even–numbered year; $120.
52. Occupational therapist: November 1 of each odd–numbered year; $59.
53. Occupational therapy assistant: November 1 of each odd–numbered year; $62.
54. Optometrist: January 1 of each even–numbered year; $65.
54m. Perfusionist: November 1 of each odd–numbered year; $56.
55. Pharmacist: June 1 of each even–numbered year; $97.
56. Pharmacy: June 1 of each even–numbered year; $56.
57. Physical therapist: November 1 of each odd–numbered year; $62.
57m. Physical therapist assistant: November 1 of each odd–numbered year; $44.

NOTE: Subd. 57m. is created eff. 4–1-04 by 2001 Wis. Act 70.

58. Physician: November 1 of each odd–numbered year; $106.
59. Physician assistant: November 1 of each odd–numbered year; $72.
60. Podiatrist: November 1 of each odd–numbered year; $150.
61. Private detective: September 1 of each even–numbered year; $101.
62. Private detective agency: September 1 of each even–numbered year; $53.
63. Private practice school psychologist: October 1 of each odd–numbered year; $103.
63g. Private security person: September 1 of each even–numbered year; $53.
63m. Professional counselor: July 1 of each odd–numbered year; $76.
63t. Professional fund–raiser: September 1 of each even–numbered year; $93.
63u. Professional geologist: August 1 of each even–numbered year; $59.
63v. Professional geology, hydrology or soil science firm, partnership or corporation: August 1 of each even–numbered year; $53.
63w. Professional hydrologist: August 1 of each even–numbered year; $53.
63x. Professional soil scientist: August 1 of each even–numbered year; $53.
64. Psychologist: October 1 of each odd–numbered year; $157.
65. Real estate broker: January 1 of each odd–numbered year; $128.
66. Real estate business entity: January 1 of each odd–numbered year; $56.
67. Real estate salesperson: January 1 of each odd–numbered year; $83.
67m. Registered interior designer: August 1 of each even–numbered year; $56.
67q. Registered massage therapist or bodyworker: March 1 of each odd–numbered year; $53.

NOTE: Subd. 67q. is repealed eff. 3–1-03 by 2001 Wis. Act 74.

67v. Registered music, art or dance therapist: October 1 of each odd–numbered year; $53.
67x. Registered music, art, or dance therapist with psychotherapy license: October 1 of each odd-numbered year; $53.
68. Respiratory care practitioner: November 1 of each odd–numbered year; $65.
68d. Social worker: July 1 of each odd–numbered year; $63.
68h. Social worker, advanced practice: July 1 of each odd–numbered year; $70.
68p. Social worker, independent: July 1 of each odd-numbered year; $58.
68t. Social worker, independent clinical: July 1 of each odd–numbered year; $73.
68v. Speech–language pathologist: February 1 of each odd–numbered year; $63.
69. Time–share salesperson: January 1 of each odd-numbered year; $119.
70. Veterinarian: January 1 of each even–numbered year; $105.
71. Veterinary technician: January 1 of each even–numbered year; $58.

(b) The renewal fee for an apprentice, journeyman, student or temporary credential is $10. The renewal dates specified in par.(a) do not apply to apprentice, journeyman, student or temporary credentials.

(c) Except as provided in sub.(3), renewal applications shall include the applicable renewal fee specified in pars.(a) and (b).

(d) If an applicant for credential renewal requests that the department process an application on an expedited basis, the

applicant shall pay a service fee that is equal to the department's best estimate of the cost of processing the application on an expedited basis, including the cost of providing counter or other special handling services.

(3) LATE RENEWAL. (a) Except as provided in rules promulgated under par. (b), if the department does not receive an application to renew a credential before its renewal date, the holder of the credential may restore the credential by payment of the applicable renewal fee specified in sub. (2) (a) and by payment of a late renewal fee of $25.

(b) The department or the interested examining board or affiliated credentialing board, as appropriate, may promulgate rules requiring the holder of a credential who fails to renew the credential within 5 years after its renewal date to complete requirements in order to restore the credential, in addition to the applicable requirements for renewal established under chs. 440 to 480, that the department, examining board or affiliated credentialing board determines is necessary to protect the public health, safety or welfare. The rules may not require the holder to complete educational requirements or pass examinations that are more extensive than the educational or examination requirements that must be completed in order to obtain an initial credential from the department, the examining board or the affiliated credentialing board.

(4) DENIAL OF CREDENTIAL RENEWAL. (a) *Generally.* If the department or the interested examining board or affiliated credentialing board, as appropriate, determines that an applicant for renewal has failed to comply with sub. (2) (c) or (3) or with any other applicable requirement for renewal established under chs. 440 to 480 or that the denial of an application for renewal of a credential is necessary to protect the public health, safety or welfare, the department, examining board or affiliated credentialing board may summarily deny the application for renewal by mailing to the holder of the credential a notice of denial that includes a statement of the facts or conduct that warrant the denial and a notice that the holder may, within 30 days after the date on which the notice of denial is mailed, file a written request with the department to have the denial reviewed at a hearing before the department, if the department issued the credential, or before the examining board or affiliated credentialing board that issued the credential.

(b) Applicability. This subsection does not apply to a denial of a credential renewal under s. 440.12 or 440.13 (2) (b).

History: 1991 a. 39 ss. 3305,3313; 1991 a. 78,160, 167,269,278,315; 1993 a. 3, 16, 102, 105, 107,443, 463,465; 1993 a. 490 ss. 228 to 230,274, 275; 1995 a. 27, 233. 321, 322, 461: 1997 a. 27, 75, 81, 96, 156. 191, 237. 261, 300; 1999 a. 9, 32; 2001 a. 16, 70, 74, 80, 89.

440.11 Change of name or address. **(1)** An applicant for or recipient of a credential who changes his or her name or moves from the last address provided to the department shall notify the department of his or her new name or address within 30 days of the change in writing or in accordance with other notification procedures approved by the department.

(2) The department or any examining board, affiliated credentialing board or board in the department may serve any process, notice or demand on the holder of any credential by mailing it to the last–known address of the holder as indicated in the records of the department, examining board, affiliated credentialing board or board.

(3) Any person who fails to comply with sub. (1) shall be subject to a forfeiture of $50.

History: 1987 a. 27; 1991 a. 39; 1993 a. 107; 1997 a. 27.

440.12 Credential denial, nonrenewal and revocation based on tax delinquency. Notwithstanding any other provision of chs. 440 to 480 relating to issuance or renewal of a credential, the department shall deny an application for an initial credential or credential renewal or revoke a credential if the department of revenue certifies under s. 73.0301 that the applicant or credential holder is liable for delinquent taxes, as defined in s. 73.0301 (1) (c).

History: 1997 a. 237.

Cross reference: See also ch. RL 9, Wis. adm. code.

440.13 Delinquency in support payments; failure to comply with subpoena or warrant. **(1)** In this section:

(b) "Memorandum of understanding" means a memorandum of understanding entered into by the department of regulation and licensing and the department of workforce development under s. 49.857.

(c) "Support" has the meaning given in s. 49.857 (1) (g).

(2) Notwithstanding any other provision of chs. 440 to 480 relating to issuance of an initial credential or credential renewal, as provided in the memorandum of understanding:

(a) With respect to a credential granted by the department, the department shall restrict, limit or suspend a credential or deny an application for an initial credential or for reinstatement of an inactive license under s. 452.12 (6) (e) if the credential holder or applicant is delinquent in paying support or fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and related to support or paternity proceedings.

(b) With respect to credential renewal, the department shall deny an application for renewal if the applicant is delinquent in paying support or fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and related to support or paternity proceedings.

(c) With respect to a credential granted by a credentialing board, a credentialing board shall restrict, limit or suspend a credential held by a person or deny an application for an initial credential when directed to do so by the department.

History: 1997 a. 191, 237.

440.14 Nondisclosure of certain personal information.

(1) In this section: (a) "List" means information compiled or maintained by the department or a credentialing board that contains the personal identifiers of 10 or more individuals.

(b) "Personal identifier" means a name, social security number, telephone number, street address, post-office box number or 9–digit extended zip code.

(2) If a form that the department or a credentialing board requires an individual to complete in order to apply for a credential or credential renewal or to obtain a product or service from the department or the credentialing board requires the individual to provide any of the individual's personal identifiers, the form shall include a place for the individual to declare that the individual's personal identifiers obtained by the department or the credentialing board from the information on the form may not be disclosed on any list that the department or the credentialing board furnishes to another person.

(3) If the department or a credentialing board requires an individual to provide, by telephone or other electronic means, any of the individual's personal identifiers in order to apply for a credential or credential renewal or to obtain a product or service from the department or a credentialing board, the department or the credentialing board shall ask the individual at the time that the individual provides the information if the individual wants to declare that the individual's personal identifiers obtained by telephone or other electronic means may not be disclosed on any list that the department or the credentialing board furnishes to another person.

(4) The department or a credentialing board shall provide to an individual upon request a form that includes a place for the individual to declare that the individual's personal identifiers obtained by the department or credentialing board may not be disclosed on any list that the department or credentialing board furnishes to another person.

(5) (a) The department or a credentialing board may not disclose on any list that it furnishes to another person a personal identifier of any individual who has made a declaration under sub. (2), (3) or (4).

(b) Paragraph (a) does not apply to a list that the department or a credentialing board furnishes to another state agency, a law enforcement agency or a federal governmental agency. In addition, par. (a) does not apply to a list that the department or the board of nursing furnishes to the coordinated licensure information system under s. 441.50 (7). A state agency that receives a list from the department or a credentialing board containing a personal identifier of any individual who has made a declaration under sub. (2), (3) or (4) may not disclose the personal

identifier to any person other than a state agency, a law enforcement agency or a federal governmental agency.

History: 1999 a. 88; 2001 a. 66.

440.142 Reporting potential causes of public health emergency. (1) A pharmacist or pharmacy shall report to the department of health and family services all of the following:

(a) An unusual increase in the number of prescriptions dispensed or nonprescription drug products sold for the treatment of medical conditions specified by the department of health and family services by rule under s. 252.02 **(7).**

(b) An unusual increase in the number of prescriptions dispensed that are antibiotic drugs.

(c) The dispensing of a prescription for treatment of a disease that is relatively uncommon or may be associated with bioterrorism, as defined in s. 166.02 (1r).

(2) (a) Except as provided in par.(b), a pharmacist or pharmacy may not report personally identifying information concerning an individual who is dispensed a prescription or who purchases a nonprescription drug product as specified in sub.(1) (a), (b), or **(c).**

(b) Upon request by the department of health and family services, a pharmacist or pharmacy shall report to that department personally identifying information other than a social security number concerning an individual who is dispensed a prescription or who purchases a nonprescription drug product as specified in sub.(1) (a), (b), or (c).

History: 2001 a. 109.

440.20 Disciplinary proceedings. (1) Any person may file a complaint before the department or any examining board, affiliated credentialing board or board in the department and request the department, examining board, affiliated credentialing board or board to commence disciplinary proceedings against any holder of a credential.

(3) The burden of proof in disciplinary proceedings before the department or any examining board, affiliated credentialing board or board in the department is a preponderance of the evidence.

(4) In addition to any grounds for discipline specified in chs. 440 to 480, the department or appropriate examining board, affiliated credentialing board or board in the department may reprimand the holder of a credential or deny, limit, suspend or revoke the credential of any person who intentionally violates s. 252.14 (2) or intentionally discloses the results of a blood test in violation of s. 252.15 (5) (a) or (5m).

***History:* 1977 c. 418; 1979 c. 34: 1985 a. 29: 1989 a. 31,201; 1991 a. 39: 1993 a. 16, 27, 102, 107, 490.**

The constitutionality of sub.(3) is upheld. Gandhi v. **Medical Examining Board, 168 Wis. 2d 299.483 N.W.2d 295 (Ct. App.** 1992).

A hearing is not required for **a complaint filed under this section. 68 Atty. Gen.** 30.

The "preponderance of **the evidence" burden** of proof **under** sub.(3) **does not violate the due process rights** of **a licensee. 75 Atty. Gen.** 76.

440.205 Administrative warnings. If the department or a board, examining board or affiliated credentialing board in the department determines during an investigation that there is evidence of misconduct by a credential holder, the department, board, examining board or affiliated credentialing board may close the investigation by issuing an administrative warning to the credential holder. The department or a board, examining board or affiliated credentialing board may issue an administrative warning under this section only if the department or board, examining board or affiliated credentialing board determines that no further action is warranted because the complaint involves a first occurrence of a minor violation and the issuance of an administrative warning adequately protects the public by putting the credential holder on notice that any subsequent violation may result in disciplinary action. If an administrative warning is issued, the credential holder may obtain a review of the administrative warning through a personal appearance before the department, board, examining board or affiliated credentialing board that issued the administrative warning. Administrative warnings do not constitute an adjudication of guilt or the imposition of discipline and may not be used as evidence that the credential holder is guilty of the alleged misconduct. However, if a subsequent allegation of misconduct by the credential holder is received by the department or a board, examining board or affiliated credentialing board in the department, the matter relating to the issuance of the administrative warning may be reopened and disciplinary proceedings may be commenced on the matter, or the administrative warning may be used in any subsequent disciplinary proceeding as evidence that the credential holder had actual knowledge that the misconduct that was the basis for the administrative warning was contrary to law. The record that an administrative warning was issued shall be a public record. The contents of the administrative warning shall be private and confidential. The department shall promulgate rules establishing uniform procedures for the issuance and use of administrative warnings.

History: 1997 a. 139.

Cross reference: See also ch. RL **8,** Wis. **adm. code.**

440.21 Enforcement of laws requiring credential.

(1) The department may conduct investigations, hold hearings and make findings as to whether a person has engaged in a practice or used a title without a credential required under chs. 440 to 480.

(2) If, after holding a public hearing, the department determines that a person has engaged in a practice or used a title without a credential required under chs. 440 to 480, the department may issue a special order enjoining the person from the continuation of the practice or use of the title.

(3) In lieu of holding a public hearing, if the department has reason to believe that a person has engaged in a practice or used a title without a credential required under chs. 440 to 480, the department may petition the circuit court for a temporary restraining order or an injunction as provided in ch. 813.

(4) (a) Any person who violates a special order issued under sub.(2) may be required to forfeit not more than $1 0,000 for each offense. Each day of continued violation constitutes a separate offense. The attorney general or any district attorney may commence an action in the name of the state to recover a forfeiture under this paragraph.

(b) Any person who violates a temporary restraining order or an injunction issued by a court upon a petition under sub.(3) may be fined not less than $25 nor more than $5,000 or imprisoned for not more than one year in the county jail or both.

History: 1991 a. 39; 1993 a. 102.

Cross reference: See also ch. RL 3, Wis. adm. code.

440.22 Assessment of costs. (1) In this section, "costs of the proceeding" means the compensation and reasonable expenses of hearing examiners and of prosecuting attorneys for the department, examining board or affiliated credentialing board, a reasonable disbursement for the service of process or other papers, amounts actually paid out for certified copies of records in any public office, postage, telephoning, adverse examinations and depositions and copies, expert witness fees, witness fees and expenses, compensation and reasonable expenses of experts and investigators, and compensation and expenses of a reporter for recording and transcribing testimony.

(2) In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. Costs assessed under this subsection are payable to the department. Interest shall accrue on costs assessed under this subsection at a rate of 12% per year beginning on the date that payment of the costs are due as ordered by the department, examining board, affiliated credentialing board or board. Upon the request of the department of regulation and licensing, the department of justice may commence an action to recover costs assessed under this subsection and any accrued interest.

(3) In addition to any other discipline imposed, if the department, examining board, affiliated credentialing board or board assesses costs of the proceeding to the holder of the credential under sub.(2), the department, examining board, affiliated credentialing board or board may not restore, renew or otherwise issue any credential to the holder until the holder has made payment to the department under sub.(2) in the full amount assessed, together with any accrued interest.

History: 1987 a. 27; 1991 a. 39; 1993 a. 107; 1997 a. 27.

The collection of **costs assessed under this section may not be pursued in an independent action for a money judgment. The costs may he collected only as a**

condition of **reinstatement** of **the disciplined practitioner's credentials. State v. Dunn, 213 Wis. 2d 363, 570** N.W.2d **614 (Ct. App. 1997).**

440.23 Cancellation of credential; reinstatement.

(1) If the holder of a credential pays a fee required under s. 440.05 (1) or (6), 440.08, 444.03, 444.05, 444.11 or 459.46 (2) (b) by check or debit or credit card and the check is not paid by the financial institution upon which the check is drawn or if the demand for payment under the debit or credit card transaction is not paid by the financial institution upon which demand is made, the department may cancel the credential on or after the 60th day after the department receives the notice from the financial institution, subject to sub. (2).

(2) At least 20 days before canceling a credential, the department shall mail a notice to the holder of the credential that informs the holder that the check or demand for payment under the debit or credit card transaction was not paid by the financial institution and that the holder's credential may be canceled on the date determined under sub. (1) unless the holder does all of the following before that date:

(a) Pays the fee for which the unpaid check or demand for payment under the credit or debit card transaction was issued.

(b) If the fee paid under par. (a) is for renewal and the credential has expired, pays the applicable penalty for late renewal specified in s. 440.08 (3).

(c) Pays the charge for an unpaid draft established by the depository selection board under s. 20.905 (2).

(3) Nothing in sub. (1) or (2) prohibits the department from extending the date for cancellation to allow the holder additional time to comply with sub. (2) (a) to (c).

(4) A cancellation of a credential under this section completely terminates the credential and all rights, privileges and authority previously conferred by the credential.

(5) The department may reinstate a credential that has been canceled under this section only if the previous holder complies with sub. (2) (a) to (c) and pays a $30 reinstatement fee.

History: 1989 a. 31; 1991 a. 39, 189, 269, 278, 315; 1993 a. 16; 1995 a. 27; 1999 a. 9.

440.25 Judicial review. The department may seek judicial review under ch. 227 of any final disciplinary decision of the medical examining board or affiliated credentialing board attached to the medical examining board. The department shall be represented in such review proceedings by an attorney within the department. Upon request of the medical examining board or the interested affiliated credentialing board, the attorney general may represent the board. If the attorney general declines to represent the board, the board may retain special counsel which shall be paid for out of the appropriation under s. 20.165 (1) (g).

History: 1985 a. 340; 1993 a. 107.

CHAPTER 450

PHARMACY EXAMINING BOARD

Cross–referenee: See definitions in s. 440.01.
Cross Reference: See also Phar. **Wis.** adm. code

450.01 Definitions. In this chapter:

(1) "Administer" means the direct application of a vaccine or a prescribed drug or device, whether by injection, ingestion or any other means, to the body of a patient or research subject by any of the following:

(a) A practitioner or his or her authorized agent.

(b) A patient or research subject at the direction of a practitioner.

(c) A pharmacist.

(2) "Board" means the pharmacy examining board.

(3) "Compound" means to mix, combine or put together various ingredients or drugs for the purpose of dispensing.

(4) "Controlled substance" has the meaning designated in s. 961.01 (4).

(5) "Deliver" or "delivery" means the actual, constructive or attempted transfer of a drug or device from one person to another.

(6) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component, part or accessory, which does not achieve any of its principal intended purposes through chemical action within or on the body of a person or other animal, is not dependent upon being metabolized for the achievement of any of its principal intended purposes and is:

(a) Recognized by the **U.S.** pharmacopoeia and national formulary or official homeopathic pharmacopoeia of the United States, or any supplement to either of them;

(b) Intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease or other conditions in persons or other animals; or

(c) Intended to affect the structure or any function of the body of persons *or* other animals.

(7) "Dispense" means to deliver a prescribed drug or device to an ultimate user or research subject by or pursuant to the prescription order of a practitioner, including the compounding, packaging or labeling necessary to prepare the prescribed drug or device for delivery.

(8) "Distribute" means to deliver, other than by administering or dispensing.

(9) "Distributor" means a person licensed by the board under s. 450.07 **(2).**

(10) "Drug" means:

(a) Any substance recognized as a drug in the official U.S. pharmacopoeia and national formulary or official homeopathic pharmacopoeia of the United States or any supplement to either of them;

(b) Any substance intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease or other conditions in persons or other animals;

(c) Any substance other than a device or food intended to affect the structure or any function of the body of persons or other animals; or

(d) Any substance intended for use as a component of any article specified in pars. (a) to (c) hut does not include gases or devices or articles intended for use or consumption in or for mechanical, industrial, manufacturing or scientific applications or purposes.

(11) "Drug product" means a specific drug or drugs in a specific dosage form and strength from a known source of manufacture.

(12) "Manufacturer" means a person licensed by the board under s. 450.07 (1).

(13) "Manufacturing" means making, assembling, processing or modifying devices, or mixing, producing or preparing drugs in dosage forms by encapsulating, entableting or other process, or packaging, repackaging or otherwise changing the container, wrapper or label of any package containing a drug or device in furtherance of the distribution of the drug or device from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer.

(13m) "Nonprescription drug product" means any nonnarcotic drug product which may be sold without a prescription order and which is prepackaged for use by consumers and labeled in accordance with the requirements of state and federal law.

(14) "Patient" means the person or other animal for whom drug products or devices are prescribed or to whom drug products or devices are dispensed or administcred.

(15) "Phamiacist" means a person licensed by the board under s. 450.03 or 450.05.

(16) "Practice of pharmacy" means any of the following:

(a) Interpreting prescription orders.

(b) Compounding, packaging, labeling, dispensing and the coincident distribution of drugs and devices.

(c) Participating in drug utilization reviews.

(d) Proper and safe storage of drugs and devices and maintaining proper records of the drugs and devices.

(e) Providing information on drugs or devices which may include, but is not limited to, advice relating to therapeutic values, potential hazards and uses.

(f) Drug product substitution under s. 450.13.

(g) Supervision of pharmacist supportive personnel.

(h) Making therapeutic alternate drug selections in accordance with written guidelines or procedures previously established by a pharmacy and therapeutics committee of a hospital and approved

by the hospital's medical staff and by an individual physician for his or her patients for the period of each patient's stay within the hospital.

(i) Drug regimen screening, including screening for therapeutic duplication, drug–to-drug interactions, incorrect dosage, incorrect duration of treatment, drug allergy reactions and clinical abuse or misuse.

(j) Performing any act necessary to manage a pharmacy.

(k) Administering prescribed drug products and devices under s. 450.035 (1r) and, pursuant to vaccination protocols, vaccines.

(17) "Practitioner" means a person licensed in this state to prescribe and administer drugs or licensed in another state and recognized by this state as a person authorized to prescribe and administer drugs.

(18) "Prescribed drug or device" means any drug or device prescribed by a practitioner.

(19) "Prescription" means a drug or device prescribed by a practitioner.

(20) "Prescription drug" means:

(a) Any drug, drug product or drug-containing preparation which is subject to 21 USC 353 (b) or 21 CFR 201.105.

(b) Any controlled substance included in schedules II to V of ch. 961, whether by statute or rule, except substances which by law may be dispensed without the prescription order of a practitioner. Controlled substances are included within this definition for purposes of s. 450.11 (3), (4) (a) and (8) only and for violations thereof punishable under s. 450.11 (9).

(21) "Prescription order" means an order transmitted orally, electronically or in writing by a practitioner for a drug or device for a particular patient.

(22) "Vaccination protocol" means a written protocol agreed to by a physician, as defined in s. 448.01 (5), and a pharmacist that establishes procedures and record–keeping and reporting requirements for the administration of a vaccine by a pharmacist for a period specified in the protocol that may not exceed 2 years.

History: 1985a. 146; 1987a. 65; 1991 a. 114; 1995 a. 448; 1997 a. 27, 68; 1997 a. 237 s. 727m.

Vitamins not intended for use in the diagnosis, cure, investigation, treatment, or prevention of diseases are not drugs under this section. 66 Atty. Gen. 137.

450.02 Pharmacy examining board. (1) The department shall keep a record of the proceedings and a register of the names and places of practice or business of pharmacies, manufacturers, distributors and other persons licensed under this chapter, and the books, registers and records of the department shall be prima facie evidence of the matters recorded.

(2) The board shall adopt rules defining the active practice of pharmacy. The rules shall apply to all applicants for licensure under **s.** 450.05.

(29) (a) The pharmacy examining board shall, after consultation with the medical examining board and the board of nursing, promulgate rules that establish criteria for approving courses under ss. 450.035 (1r) and (2) and 450.085 (1).

(b) The board shall promulgate rules that establish requirements and procedures for the administration of a drug product or device, as defined in s. 450.035 (1g), by a pharmacist under **s.** 450.035 (1r). Notwithstanding **s.** 15.08 ***(5)*** (b), the board may promulgate rules under this paragraph only if the rules are identical to rules recommended by the pharmacist advisory council. The board may amend or repeal rules promulgated under this paragraph only upon the recommendation of the pharmacist advisory council.

(2m) The board shall periodically prepare and distribute letters, bulletins or other types of notice to pharmacists that identify the courses that are approved for purposes of ss. 450.035 (1r) and (2) and 450.085 (1).

(3) The board may promulgate rules:

(a) Relating to the manufacture of drugs and the distribution and dispensing of prescription drugs.

(b) Establishing security standards for pharmacies.

(c) Relating to the manufacture, distribution and dispensing of hypodermic syringes, needles and other objects used, intended for use *or* designed for **use** in injecting a drug.

(d) Necessary for the administration and enforcement of this chapter and ch. 961.

(e) Establishing minimum standards for the practice of pharmacy.

(f) Establishing procedures for identifling pharmacists impaired by alcohol or other drugs or physical or mental disability or disease and for assisting those pharmacists in obtaining treatment.

(4) The board may not promulgate a rule which does any of the following:

(a) Limits to a pharmacist the authority to sell or in any way interferes with the sale of nonnarcotic nonprescription drugs that are prepackaged for consumer use and labeled in compliance with all applicable state and federal laws.

(b) Interprets s. 448.03 **(2) (e)** to expand the therapeutic alternate drug selection powers of a pharmacist beyond those specified in **s.** 450.01 (16) (h).

History: 1985 a. 146; 1987 a. 65; 1995 a. 448; 1997 a. 68; 1997 a. 237 s. 727m.
Cross Reference: See also Phar, Wis. adm. code.

450.025 Pharmacist advisory council. The pharmacist advisory council shall recommend rules for promulgation by the board under s. 450.02 (2g) (b) and may recommend the amendment or repeal of any rules promulgated under s. 450.02 (2g) (b). A unanimous vote of the members of the pharmacist advisory council is required for the council to make a recommendation under this section.

History: 1997 a. 68; 1997 a. 231 s. 727m.

450.03 Pharmacist; licensure. (1) No person may engage in the practice of pharmacy or use the title "pharmacist" or sell, give away or barter drugs unless the person is licensed as a pharmacist by the board. This subsection does not apply to:

(a) The offer to sell or sale of contraceptive articles, as defined under s. 450.155 (1) (a), by a registered nurse licensed under s. 441.06.

(b) The sale of any nonprescription drug product, in an original unbroken package, which complies with 21 USC 301 to 392.

(c) The sale of pesticides which comply with ss. 94.67 to 94.71.

(d) The delivery of complimentary samples of drug products or devices to a practitioner by a manufacturer or its agent acting in the usual course of business.

(e) Any person lawfully practicing within the scope of a license, permit, registration, certificate or certification granted to practice professional or practical nursing or nurse-midwifery under ch. 441, to practice dentistry or dental hygiene under ch. 447, to practice medicine and surgery under ch. 448, to practice optometry under ch. 449 or to practice veterinary medicine under ch. 453, or as otherwise provided by statute.

(f) **A** person who has successfully completed his or her second year in, and is enrolled at, an accredited school of pharmacy and whose practice of pharmacy is limited to performing duties under the direct supervision of a person licensed as a pharmacist by the board.

(g) A person who has applied for a license under **s.** 450.05 whose practice of pharmacy is limited to performing duties under the direct supervision of a person licensed as a pharmacist by the board and during the period before which the board takes final action on the person's application.

(2) The board shall issue a license as a pharmacist to any person who files satisfactory proof of qualifications under **s.** 450.04 (3), passes the examination under **s.** 450.04 and pays the fee specified in s. 440.05 (1), except as provided under s. 450.10.

History: 1985 a. 146; 1987 a. 264; 1991 a. 39; 2001 a. 16.
Cross Reference: See also **chs.** Phar 2 and 17, Wis. adm. code.

450.035 Administration of drug products and devices; vaccines. (1g) In this section, "drug product or device" does not include a vaccine.

(1r) A pharmacist may not administer by injection a prescribed drug product or device unless he or she has successfully completed a course of study and training in injection technique conducted by a course provider approved by the American Council on Pharmaceutical Education or the board. **A** pharmacist may administer a prescribed drug product or device under this subsection only in the course of teaching self–administration techniques to a patient. **A** pharmacist who administers a prescribed drug product or device under this subsection shall comply with the requirements and procedures established in rules promulgated by the board under s. 450.02 (2g) (b).

(2) A pharmacist may not administer a vaccine unless he or she has successfully completed 12 hours in a course of study and training, approved by the American Council on Pharmaceutical Education or the board, in vaccination storage, protocols, injection technique, emergency procedures and record keeping and has satisfied the requirements specified in sub. (2t). **A** pharmacist may not administer a vaccine under this subsection to a person who is under the age of 18.

(2m) A pharmacist may not delegate to any person any administration of a prescribed drug product or device or vaccine under sub. (1r) or (2).

(2t) A pharmacist may not administer a vaccine under sub. (2) unless he or she satisfies each of the following:

(a) The pharmacist has in effect liability insurance against loss, expense and liability resulting from errors, omissions or neglect in the administration of vaccines in an amount that is not less than $1,000,000 for each occurrence and $2,000,000 for all occurrences in any one policy year.

(b) The pharmacist maintains proof that he or she satisfies the requirement specified in par. (a) and, upon request, provides copies of such proof to the department or the board.

(3) A pharmacist who successfully completes a course of study and training specified in sub. (1r) or (2) shall maintain proof of completion and, upon request, provide copies of such proof to the department or the board.

History: 1997 a. 68; 1997 a. 231 s. 727m.

450.04 Examinations. (1) Examinations for licensure as a pharmacist shall be designed to determine whether an applicant is competent to engage in the practice of pharmacy.

(2) Examinations shall be conducted at least semiannually.

(3) Every candidate for examination for licensure as a pharmacist shall submit an application on a form provided by the department and pay the fee specified in s. 440.05 (1) at least **30** days before the date of examination. Every candidate shall also submit proof to the board that he or she:

(a) Has received a professional degree from a pharmacy program approved by the board; and

(bj Has completed an internship in the practice of pharmacy or has practical experience acquired in another state which is comparable to that included in an internship and which is approved and verified by the board or by the agency which is the equivalent of the board in the state in which the practical experience was acquired.

History: 1985 a. 146; 1991 a. 39: 1997 a. 27; 1997 a. 237 s. 722u; 2001 a. 16.
Cross Reference: See also ch. Phar 4 and s. Phar 2.03, Wis. adm. code.
Post-examination review with applicants discussed. 68 Atty. Gen. 48.

450.05 Pharmacist licensed in other state; licensure. The board may, upon application and payment of the fee specified in s. 440.05 (2), license as a pharmacist any person who is licensed in another state if the person produces satisfactory evidence of having met requirements comparable to those that existed in this state at the time the person became licensed in the other state. The board shall not license as a pharmacist under this section any person whose license to practice pharmacy in another state has been voluntarily surrendered, limited, suspended or revoked. The board may require an applicant under this section to pass an equivalency examination administered by the board. If the board requires an equivalency examination, any person licensed as a pharmacist in another state who is engaged in the active practice of pharmacy may only be required to pass an examination on state and federal laws, rules and regulations.

History: 1985 a. 146.
Cross Reference: See also chs. Phar 2 and 5, Wis. adm. code.
This chapter applies to out–of–state pharmacies that regularly and continually solicit mail orders for retail sale of prescription drugs to Wisconsin residents. 72 Atty. Gen. 121.

450.06 Pharmacy; licensure. (1) No pharmacist may dispense at any location which is not licensed as a pharmacy by the board. No person may use or display the title "pharmacy", "drugstore", "apothecary" or any other title, symbol or insignia having the same or similar meanings, except for a place of practice which is licensed as a pharmacy by the board.

(2) The board shall issue a license to operate a pharmacy at a specific location if:

(a) An application is made on forms provided by the board showing all of the following:

1. The location of the pharmacy.

2. A floor plan of the pharmacy.

3. The name and address of the person holding title and ownership control of the location.

4. The name of the managing pharmacist of the pharmacy under s. 450.09 (1).

(b) The location of the pharmacy is inspected and found to meet all the requirements of this chapter.

(c) The fee under s. 440.05 (1) is paid.

(2m) The board may request, but may not require, that practice–related information be submitted on the application under sub. **(2)** (a).

(3) No pharmacy may be opened or kept open for practice following a change of ownership or change of location unless the pharmacy is licensed for the new owner or at the new location, notwithstanding any remaining period of validity under the pharmacy's license under the previous owner or at the previous location.

(4) Any person who fails to license his or her place of practice as required under this section may be assessed a forfeiture of not less than $25 nor more than $50 for each separate offense. Each day of violation constitutes a separate offense.

History: 1985 a. 146: 1991 a. 39.
Cross Reference: See also ch. Phar 6, **Wis. adm. code.**

450.07 Manufacturers and distributors; licensure. (1) No person may engage in manufacturing in this state unless the person obtains a manufacturer's license from the board. For the issuance of a license under this subsection, the applicant shall pay the fee specified in s. 440.05 (1).

(2) No person may engage in the sale or distribution at wholesale of a prescription drug or device in this state without first obtaining a distributor's license from the board. For the issuance of a license under this subsection, the applicant shall pay the fee specified in s. 440.05 (1).

(3) No manufacturer or distributor may sell or distribute a prescription drug or device at wholesale to any person other than:

(a) Pharmacists.

(b) Practitioners.

(c) Persons who procure prescription drugs or devices for the purpose of lawful research, teaching or testing and not for resale.

(d) Hospitals and other institutions which procure prescription drugs or devices for administration to patients.

(e) Officers or employees of the federal government who are authorized to receive prescription drugs or devices in the performance of their official duties.

(f) Distributors.

(4) (a) The issuance of licenses under this section is subject to rules the board adopts for the protection of the public health and safety.

(b) The board shall adopt rules prescribing minimum standards for manufacturing and distributing drugs.

History: 1985 a. 146; 1991 a. 39.
Cross Reference: See also chs. Phar 12 and 13, Wis. adm. code.

450.08 License renewal. (1) The renewal date for all licenses granted by the board is specified under s. 440.08 (2) (a). Only a holder of an unexpired license may engage in his or her licensed activity.

(2) (a) A pharmacist's license may be renewed by complying with continuing education requirements under s. 450.085 and paying the applicable fee specified under s. 440.08 (2) (a) on or before the applicable renewal date specified under s. 440.08 (2) (a). Failure to obtain renewal within the time period specified under this paragraph terminates the right of the person to be licensed as a pharmacist, and such right can only be acquired by passing an examination to the satisfaction of the board.

(b) A pharmacy, manufacturer's or distributor's license may be renewed by paying the applicable fee specified under s. 440.08 (2) (a) on or before the applicable renewal date specified under s. 440.08 (2) (a).

History: 1985 a. 146; 1991 a. 39; 1997 a. 68; 1997 a. 237 s. 727m.

450.085 Continuing education. (1) An applicant for renewal of a license under s. 450.08 (2) (a) shall submit proof that he or she has completed, within the 2–year period immediately preceding the date of his or her application, 30 hours of continuing education in courses conducted by a provider that is approved by the American Council on Pharmaceutical Education or in courses approved by the board. Courses specified in s. 450.035 (Ir) and (2) are courses in continuing education for purposes of this subsection. This subsection does not apply to an applicant for renewal of a license that expires on the first renewal date after the date on which the board initially granted the license.

(2) The board may waive all or part of any requirement in sub. (1) if it finds that exceptional circumstances such as prolonged illness, disability or other similar circumstances have prevented a pharmacist from meeting the requirement.

History: 1997 a. 68; 1997 a. 231 s. 727m.
Cross Reference: See also ch. Phar 16, Wis. adm. code.

450.09 Pharmacy practice. (1) MANAGING PHARMACIST. (a) Every pharmacy shall be under the control of the managing pharmacist who signed the pharmacy license application, the most recent license renewal application or the most recent amended schedule of operations. The managing pharmacist shall be responsible for the professional operations of the pharmacy. A pharmacist may be the managing pharmacist of not more than one community and one institutional pharmacy at any time and shall be engaged in the practice of pharmacy at each location he or she supervises. The board shall by rule define community pharmacy and institutional pharmacy for the purposes of this section.

(b) If the managing pharmacist anticipates being continuously absent for a period of more than 30 days from a pharmacy he or she supervises, the managing pharmacist shall delegate the supervisory responsibility to another pharmacist for the duration of the absence by written power of attorney which shall be kept on file in the pharmacy to which the power of attorney applies. The pharmacist designated to assume the supervisory responsibility for the pharmacy during the managing pharmacist's absence shall be engaged in the practice of pharmacy at the pharmacy to which the power of attorney applies.

(2) PRESENCE OF PHARMACIST. No pharmaceutical service may be provided to any person unless a pharmacist is present in the pharmacy to provide or supervise the service.

(3) PHARMACEUTICAL EQUIPMENT. Every pharmacy shall be equipped with proper pharmaceutical utensils for compounding and dispensing prescriptions. The board shall prescribe, by rule, minimum standards of professional and technical equipment.

(4) CONDITION OF PHARMACY. The pharmacy shall be maintained in a clean and orderly manner and the professional service area shall be equipped with proper fixtures and equipment for sanitation.

(5) DISPLAY OF LICENSE. Every original license issued by the board and the renewal license currently in force, if any, shall be displayed in the place of practice.

(6) MEDICATION PROFILE RECORD SYSTEM. Every pharmacy shall maintain a medication profile record system of all drug products dispensed for a particular patient according to the minimum standards for such systems established by the board by rule. Every practitioner shall maintain a record of all drug products dispensed to each patient according to standards established by the appropriate examining board by rule. The standards established by each examining board shall require the recording of all renewal dispensing information required by federal and state law and related rules and regulations.

(7) SELECTION OF DRUGS. Drug products purchased for subsequent sale and dispensing at a pharmacy shall be selected for purchase by a pharmacist.

(8) PENALTIES. (a) Except as provided under par. (b), any person who violates this section may be assessed a forfeiture of not less than ***$25*** nor more than $50 for each separate offense. Each day of violation constitutes a separate offense.

(b) Any person who violates sub. (5) shall forfeit $10 for each separate offense. Each day of violation constitutes a separate offense.

History: 1985 a. 146.
Cross **Reference:** See also ch. Phar 7, Wis. adm. code.

450.10 Disciplinary proceedings; immunity; orders. (1) (a) In this subsection, "unprofessional conduct" includes, but is not limited to:

1. Making any materially false statement or giving any materially false information in connection with an application for a license or for renewal or reinstatement of a license.

2. Violating this chapter or, subject to s. **961.38** (4r), ch. **961** or any federal or state statute or rule which substantially relates to the practice of the licensee.

3. Practicing pharmacy while the person's ability to practice is impaired by alcohol or other drugs or physical or mental disability or disease.

4. Engaging in false, misleading or deceptive advertising.

5. Making a substantial misrepresentation in the course of practice which is relied upon by another person.

6. Engaging in conduct in the practice of the licensee which evidences a lack of knowledge or ability to apply professional principles or skills.

7. Obtaining or attempting to obtain compensation by fraud or deceit.

8. Violating any order of the board.

(b) Subject to subch. II of ch. 111 and the rules adopted under s. 440.03 (1), the board may reprimand the licensee or deny, revoke, suspend or limit the license or any combination thereof of any person licensed under this chapter who has:

1. Engaged in unprofessional conduct.

2. Been adjudicated mentally incompetent by a court.

3. Been found guilty of an offense the circumstances of which substantially relate to the practice of the licensee.

(2) In addition to or in lieu of a reprimand or denial, limitation, suspension or revocation of a license under sub. (1), the board may, for the violations enumerated under sub. (1), assess a forfeiture of not more than $ 1,000 for each separate offense. Each day of violation constitutes a separate offense.

(3) (a) In this subsection, "health care professional" means any of the following:

1. A pharmacist licensed under this chapter.

2. A nurse licensed under ch. **441.**

3. A chiropractor licensed under ch. **446.**

4. A dentist licensed under ch. **447.**

5. A physician, physician assistant, podiatrist, physical therapist, occupational therapist or occupational therapy assistant licensed under ch. **448.**

NOTE: Subd. 5. is amended eff. 4–1-04 by 2001 Wis. Act 70 to read:

5. A physician, physician assistant. podiatrist, physical therapist, physical therapist assistant, occupational therapist, or occupational therapy assistant licensed under ch. 448.

5m. A dietitian certified under subch. V of ch. **448.**

5q. An athletic trainer licensed under subch. VI of ch. **448.**

6. An optometrist licensed under ch. **449.**

7. An acupuncturist certified under ch. **451.**

8. A veterinarian licensed under ch. **453.**

9. A psychologist licensed under ch. **455.**

10. A social worker, marriage and family therapist, or professional counselor certified or licensed under ch. **457.**

11. A speech--language pathologist or audiologist licensed under subch. II of ch. **459** or a speech and language pathologist licensed by the department of public instruction.

(b) Any health care professional who in good faith provides another health care professional with information concerning a violation of this chapter or ch. **961** by any person shall be immune from any civil or criminal liability that results from any act or omission in providing such information. In any administrative or court proceeding, the good faith of the health care professional providing such information shall be presumed.

(4) (a) The secretary may, in case of the need for emergency action, issue general and special orders necessary to prevent or correct actions by any pharmacist under this section that would be cause for suspension or revocation of a license.

(b) Special orders may direct a pharmacist to cease and desist from engaging in particular activities.

History: 1985 a. 146 1987 a. 264,399; 1989 a. 31,316; 1991 a. 39,160; 1993 a. 222,443; 1995 a. 27 s. 9145 (1); 1995 a. 448; 1997 a. 27, 67, 75, 175; 1999 a. 9, 32, 180; 2001 a. 70, 80.

Cross Reference: *See* also ch. Phar **10, Wis.** adm. code.

450.11 Prescription drugs and prescription devices. **(1)** DISPENSING. No person may dispense any prescribed drug or device except upon the prescription order of a practitioner. All prescription orders shall specify the date of issue, the name and address of the patient, the name and address of the practitioner, the name and quantity of the drug product or device prescribed, directions for the use of the drug product or device and, if the order is written by the practitioner, the signature of the practitioner. Any oral prescription order shall be immediately reduced to writing by the pharmacist and filed according to sub. (2).

(Im) ELECTRONIC TRANSMISSION. Except as provided in s. **453.068** (1) (c) **4.,** a practitioner may transmit a prescription order electronically only if the patient approves the transmission and the prescription order is transmitted to a pharmacy designated by the patient.

(2) PRESCRIPTION **OKDEK *FILE*.** Every prescription order shall be filed in a suitable book or file and preserved for at least 5 years. Subject to s. **961.38** (2), prescription orders transmitted electronically may be filed and preserved in electronic format.

(3) PREPARATION OF PRESCRIPTION DRUGS. No person other than a pharmacist or practitioner or their agents and employees as directed, supervised and inspected by the pharmacist or practitioner may prepare, compound, dispense or prepare for delivery for a patient any prescription drug.

(4) LABEL REQUIRED. (a) Except as provided under par. (b), no prescribed drug or device may be dispensed unless there is a label attached to the container disclosing all of the following:

1. The name and address of the dispensing practitioner or licensed facility from which the prescribed drug or device was dispensed.

2. The date on which the prescription was dispensed.

3. The number of the prescription order as recorded in the prescription order file of the facility from which the prescription was dispensed.

4. The name of the practitioner who prescribed the drug or device.

5. The full name of the patient.

6. Directions for use of the prescribed drug or device as contained in the prescription order.

7. The name and strength of the prescribed drug dispensed, unless the prescribing practitioner requests omission of the name and strength of the drug dispensed.

(b) Paragraph (a) does not apply to complimentary samples of drug products or devices dispensed by a practitioner to his or her patients.

(5) RENEWALS No prescription may be renewed except as designated on the prescription order. An accurate record of renewal dispensing shall be maintained showing the date and amount. No prescription may be renewed unless the requirements of sub. (1) and, if applicable, sub. (Im) have been met and written, oral or electronic authorization has been given by the prescribing practitioner.

(6) SALES OF PRESCRIPTION DRUGS. In the event of any sale of prescription drugs in bankruptcy, at public auction or any other sale of prescription drugs other than in the normal course of business or practice, the seller shall give written notice of the sale to the board at least one week prior to the date of sale and shall make a complete and accurate written report of the sale to the board within 10 days after the sale, showing the name and address of all of the purchasers of prescription drugs together with an itemized inventory of the prescription drugs sold to each purchaser. This subsection does not apply to the sale of a manufacturer, distributor or pharmacy as an ongoing business or practice if the parties first notify the hoard of the impending sale.

(7) PROHIBITED ACTS. (a) No person may obtain or attempt to obtain a prescription drug, or procure or attempt to procure the administration of a prescription drug, by fraud, deceit or willful misrepresentation or by forgery or alteration of a prescription order; or by willful concealment of a material fact; ***or*** by use of a false name or address.

(b) Information communicated to a physician in an effort to procure unlawfully a prescription drug or the administration of a prescription drug is not a privileged communication.

(c) No person may willfully make a false statement in any prescription order, report or record required by this section.

(d) No person may, for the purpose of obtaining a prescription drug, falsely assume the title of, or represent himself or herself to be, a manufacturer, distributor, pharmacist or practitioner.

(e) No person may make or utter any false or forged prescription order.

(f) No person may willfully affix any false or forged label to a package or receptacle containing prescription drugs.

(g) Except as authorized by this chapter, no person may possess, with intent to manufacture or deliver, a prescription drug. Intent under this paragraph may be demonstrated by, without limitation because of enumeration, evidence of the quantity and monetary value of the substance possessed, the possession of manufacturing implements or paraphernalia, and the activities or statements of the person in possession of the prescription drug prior to, during and after the alleged violation.

(h) No person may possess a prescription drug unless the prescription drug is obtained in compliance with this section.

(i) No pharmacist, manufachircr, distributor, owner or operator of a pharmacy or agent of a pharmacist, manufacturer, distributor or such an owner or operator may give any compensation or anything of value to a practitioner for the purpose of providing, or inducing the practitioner to obtain, any equipment, computer software or access to a service that may be used for the electronic transmission of a prescription order.

(8) RULE–MAKING AUTHORITY. The department of justice may promulgate rules necessary for the enforcement of this section. In addition to all law enforcement officers and agencies, the enforcement of this section is the responsibility of the department and

(a) The board, insofar as this section applies to pharmacists.

(b) The medical examining board. insofar as this section applies to physicians.

(bm) The podiatrists affiliated credentialing board, insofar as this section applies to podiatrists.

(c) The veterinary examining board, insofar as this section applies to veterinarians.

(d) The dentistry examining board, insofar as this section applies to dentists.

(9) PENALTIES AND ENFORCEMENT PROCEEDINGS. (a) Except as provided in par. (b), any person who violates this section may be fined not more than $500 or imprisoned not more than 6 months or both.

(b) Any person who delivers, or who possesses with intent to manufachire or deliver, a prescription drug in violation of this section is guilty of a Class H felony.

(c) In any action or proceeding brought for the enforcement of this section, it shall not be necessary to negate any exception or exemption contained in this section, and the burden of proof of any such exception or exemption shall be upon the defendant.

History: 1985 **a.** 146; 1997 a. 27, 175,283; 2001 a. 109.

450.12 Labeling of prescription drugs and prescription drug products. (1) In this section:

(a) "Brand name" means the name, other than the generic name, that the labeler of a drug or drug product places on its commercial container at the time of packaging.

(b) "Generic name" means the official or established name given a drug by the U.S. department of health and human services or the U.S. adopted names council.

(2) The manufacturer's or distributor's commercial container of every prescription drug or prescription drug product delivered to any pharmacist, practitioner, hospital or nursing home shall bear a label containing the generic name of the drug, if any, the brand name of the drug or drug product, if any, the name and address of the manufacturer of the drug or drug product and, if different from the manufacturer, the name and address of the distributor of the drug or drug product.

(3) Every prescription order or medication profile record shall include the brand name, if any, or the name of the manufacturer or distributor of the drug product dispensed.

History: 1985 **a.** 146.

450.125 Drugs for animal use. In addition to complying with the other requirements in this chapter for distributing and dispensing, a pharmacist who distributes or dispenses a drug for animal use shall comply with s. 453.068.

History: 1991 **a.** 306.

450.13 Using drug product equivalent in dispensing prescriptions. (1) DRUG PRODUCT OR EQUIVALENT TO BE USED. Except as provided in sub. (2), a pharmacist shall dispense every prescription using either the drug product prescribed or its drug product equivalent, if its drug product equivalent is lower in price to the consumer than the drug product prescribed, and shall inform the consumer of the options available in dispensing the prescription. In this section, "drug product equivalent" means a drug product that is designated the therapeutic equivalent of another drug product by the federal food and drug administration.

(2) EXCEPTION. **A** prescriber may indicate, by writing on the face of the prescription order or, with respect to a prescription order transmitted electronically, by designating in electronic format the phrase "No substitutions" or words of similar meaning or the initials "N.S.", that no substitution of the drug product prescribed may be made under sub. (1). If such indication is made, the pharmacist shall dispense the prescription with the specific drug product prescribed. No preprinted statement regarding drug product substitution may appear on the face of the prescription order.

(3) RENEWED PRESCRIPTIONS. Prescriptions dispensed with a drug product equivalent may be renewed with a different drug product equivalent only if the pharmacist informs the consumer of the change.

(4) LIMITATION ON LIABILITY. **A** pharmacist who dispenses a prescription with a drug product equivalent under this section assumes no greater liability than would be incurred had the pharmacist dispensed the prescription with the drug product prescribed.

(5) USE OF DRUG PRODUCT EQUIVALENT IN HOSPITALS. Subsections (1) to (4) do not apply to a pharmacist who dispenses a drug product equivalent that is prescribed for a patient in a hospital if the pharmacist dispenses the drug product equivalent in accordance with written guidelines or procedures previously established by a pharmacy and therapeutics committee of the hospital and approved by the hospital's medical staff and by the patient's individual physician for the period of the patient's stay within the hospital.

History: 1985 **a. 146;** 1991 a. 114; 1997 **a.** 27.

450.14 Poisons. (1) In this section, "highly toxic" has the meaning specified under 15 USC 1261 (h).

(2) No person may deliver any highly toxic substance unless the delivery is made on the prescription order of a practitioner or complies with pars. (a) to (d):

[a) The container shall be plainly labeled with the name of the substance, the name and address of the person delivering the substance and, except as provided in sub. (3), the word "Poison".

(b) The person delivering the substance shall ascertain that the recipient is aware of the poisonous character of the substance and desires it for a lawful purpose.

(c) Before delivery, the person delivering the substance shall record in a book kept for that purpose the name of the article or substance, the quantity, the purpose, the date, the name and address of the person for whom procured and the signature of the individual personally delivering the article or substance. The record shall be signed by the person to whom the substance is delivered. Each book containing records required under this paragraph shall be preserved by the owner of the book for at least 3 years after the date of the last entry and shall be open to inspection by authorized officers.

(d) If the recipient is under 18 years of age, he or she must have the written order of an adult.

(3) A "Poison" label under sub. **(2)** (a) is not required for liniments, ointments or other external preparations which are plainly labeled "for external use only".

(4) This section does not apply to manufacturers or distributors selling at wholesale nor to pesticides which comply with ss. 94.67 to 94.71.

(5) Any person who violates this section is guilty of a Class H felony.

History: 1985 **a.** 146; 1997 a. 283: 2001 **a.** 109.

450.15 Placing prescription drugs prohibited. (1) Except as otherwise provided by law, no person may put, or cause to be put, any prescription drug in any public place, or upon

any private premises without the consent of the owner or occupant.

(2) Any person who violates this section is guilty of a Class H felony.

History: 1985 a. **146;** 1997 a. 283; 2001 a. 109.

As applied to the defendant, s. 450.09 [now 450.151 was not unconstitutionally overbroad or vague. Butala v. State, 71 Wis. 2d 569,239 N.W.2d 31 (1976).

450.155 Exhibition, display or advertisement of certain vending machines by use of certain material prohibited. (1) DEFINITIONS. In this section:

(a) "Contraceptive article" means any drug, medicine, mixture, preparation, instrument, article or device of any nature used or intended or represented to be used to prevent a pregnancy.

(b) "Material" means any visual representation, image, printed matter however reproduced or sound recording.

(c) "Harmful to minors" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it does all of the following:

1. Predominantly appeals to the prurient, shameful or morbid interest of minors.

2. Is patently offensive to prevailing standards in the adult community **as** a whole with respect to what is suitable material for minors.

3. Lacks serious literary, artistic, political or scientific value, if taken as a whole, for minors.

(d) "Knowledge of the minor's age" means knowledge or information that the person is a minor.

(e) "Knowledge of the nature of the material" means any of the following:

1. Knowledge of the character and content of any material described herein.

2. Knowledge or information that the material described herein has been adjudged to be harmful to minors in a proceeding instituted under sub. (2), or is the subject of a pending proceeding instituted under sub. **(2).**

(f) "Minor" means any person under the age of 18 years.

(g) "Nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.

(h) "Person" means any individual, partnership, firm, association, corporation or other legal entity.

(i) "Sadomasochistic abuse" means the infliction of force, pain or violence upon **a** person for the purpose of sexual arousal or gratification.

(j) "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person is a female, breast.

(k) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(L) "Vending machine" means any mechanical device which automatically dispenses contraceptive articles upon the deposit in it of specified coins in payment for the contraceptive articles.

(2) EXHIBITION, DISPLAY OR ADVERTISEMENT OF CERTAIN VENDING MACHINES BY USE OF MATERIAL HARMFUL TO MINORS (a) No person with knowledge of the nature of the material and with knowledge of a minor's age, may, for commercial purposes, exhibit, display or advertise by use of any material which is harmful to minors a vending machine that dispenses contraceptive articles.

(b) Whoever violates par. (a) may be fined not more than $10,000 or imprisoned for not more than 9 months or both.

History: 1985 a. **146**

450.16 Sale of contraceptives prohibited in certain areas. (1) As used in this section:

(a) "Contraceptive article" has the meaning under s. 450.155 (1) (a).

(b) "Vending machine" has the meaning under s. 450.155 (1) (L).

(2) No person may have in the person's possession or under the person's control, any vending machine that is located in a public school, as specified under s. 115.01 (1).

(3) Any person violating this section may be fined not more than $10,000 or imprisoned for not more than 9 months or both.

History: 1985 a. **146.**

450.17 Violations. Each member of the board shall investigate and institute actions for violations of this chapter by any person and for violation of ch. 961 by pharmacists. The district attorney of the proper county shall promptly prosecute any such violation upon notice from any source.

History: 1985 a. **146;** 1995 **a. 448.**

450.18 Penalties. Except as otherwise provided in this chapter, any person who violates this chapter or any rule promulgated under the authority of this chapter may be fined not less than $50 nor more than $100 or imprisoned not less than 30 days nor more than 90 days or both.

History: 1985 **a. 146.**

CHAPTER 453
VETERINARY EXAMINING BOARD

453.068 Drugs for animal use.

(1) PRESCRIBING; DISPENSING. (a) ***Extra−label use on animal; prescription required.*** No person may make extra−label use of a drug on an animal without a prescription or in any manner not authorized by that prescription.

(b) ***Form of prescription.*** **A** prescription shall include all of the following:

1. The name and address of the veterinarian and, if the prescription is a written order, the signature of the veterinarian.

2. The name and address of the client.

3. The species and identity of the patient for which the prescription is issued.

4. The name, strength and quantity of the drug prescribed.

5. The date on which the prescription is issued.

6. The directions for administering the drug.

7. If the patient **is** a food−producing animal, the withdrawal time for the veterinary drug.

8. If the prescription authorizes extra−label use, the manner in which the client may use the drug.

9. Any cautionary statements required by law.

(c) ***Prescribing, dispensing and administering requirements for veterinarian.*** **A** veterinarian may not do any of the following:

1. Prescribe for or dispense to a client a veterinary prescription drug or a drug for extra−label use without personally examining the patient unless a veterinary-client-patient relationship exists between the veterinarian, client and patient and the veterinarian determines that the client has sufficient knowledge to administer the drug properly.

2. Prescribe or dispense a Veterinary prescription drug to a client unless the veterinarian indicates in the appropriate records described under sub. (3), within **72** hours after the prescription is issued or the drug is dispensed, that the prescription has been issued or that the drug has been dispensed.

3. Prescribe a drug to a client for extra−label use on a patient unless all of the following apply:

a. A veterinary-client-patient relationship exists between the veterinarian, client and patient and the veterinarian has made a careful medical diagnosis of the condition of the patient within the context of that veterinarian-client-patient relationship.

b. The veterinarian determines that there is no drug that is marketed specifically to treat the patient's diagnosed condition, or determines that all of the drugs that are marketed for that purpose are clinically ineffective.

c. The veterinarian recommends procedures for the client to follow to ensure that the identity of the patient will be maintained.

d. If the patient is a food−producing animal, the veterinarian prescribes a sufficient time period for drug withdrawal before the food from the patient may be marketed.

4. Transmit a prescription electronically unless the client approves the transmission and the prescription **is** transmitted to a pharmacist or veterinarian designated by the client.

(2) LABELING. **A** veterinarian or pharmacist may not dispense a drug that has been prepared, mixed, formulated or packaged by the veterinarian or pharmacist unless the veterinarian or pharmacist affixes to the container in which the drug is dispensed a label containing all of the information specified in sub. (1) (b), except the address of the client. **A** veterinarian or pharmacist may not dispense a veterinary prescription drug that has been prepackaged by its manufacturer for dispensing unless the veterinarian or pharmacist affixes to the container in which the drug is dispensed a label containing all of the information specified in sub. (1) (b), except the address of the client. **A** veterinarian or pharmacist may dispense a veterinary over−the−counter drug without affixing any information to the container in which the drug is dispensed if a label that has been affixed to the container by its manufacturer provides adequate information for its use.

(3) PRESCRIPTION RECORDS. **A** veterinarian shall maintain complete records of each veterinary prescription drug that the veterinarian receives, prescribes, dispenses or administers, and of each prescription issued by the veterinarian that authorizes extra−label **use.** Records of each veterinary prescription drug shall include the name of each veterinary prescription drug that is received, the name and address of the person from whom the drug is received and the date and quantity received, the name and address of the person to whom the drug is dispensed and the date and quantity dispensed and, if the veterinarian prescribes or administers the drug, the information specified in sub. (1)

(b). Records of each prescription authorizing extra−label use shall include the information specified in sub. (1) (b). A veterinarian shall maintain records of each veterinary prescription drug under this subsection for not less than 3 years after the date on which the veterinarian prescribes, dispenses or administers the drug or extra−label use.

(4) ENFORCEMENT. (a) ***Inspections.*** Except as provided in par. (b), if the examining board has reason to believe that a person is violating or has violated this section, the examining board, the attorney general or the district attorney of the proper county may do any of the following:

1. Inspect the premises on which the person possesses, prescribes, dispenses, labels or administers veterinary drugs.

2. Inspect pertinent records, equipment, materials, containers or facilities that are relevant to determining whether the person is violating or has violated this section.

3. Collect relevant samples of veterinary drugs.

(b) ***Records exempt from inspection.*** The examining board, attorney general or district attorney may not inspect a person's financial, pricing, personnel or sales records under this subsection, other than the records described under sub. (3).

History: 1991 a. 306; 1997 a. 27.

CHAPTER 961

UNIFORM CONTROLLED SUBSTANCES ACT

NOTE: See Chapter **161,1993–94** Stats., for detailed notes on actions by the Controlled Substances Board. (Chapter **961 was** renumbered from ch. **161 by 1995 Wis.** Act **448.)**

961.001 Declaration of intent. The legislature finds that the abuse of controlled substances constitutes a serious problem for society. As a partial solution, these laws regulating controlled substances have been enacted with penalties. The legislature, recognizing a need for differentiation among those who would violate these laws makes this declaration of Legislative intent:

(1g) Many of the controlled substances included in this chapter have useful and legitimate medical and scientific purposes and are ncccssary to maintain the health and general welfare of the people of this state.

(1m) The manufacture, distribution, delivery, possession and use of controlled substances for other than legitimate purposes have a substantial and detrimental effect on the health and general welfare of the people of this state.

(1r) Persons who illicitly traffic commercially in controlled substances constitute a substantial menace to the public health and safety. The possibility of lengthy terms of imprisonment must exist as a deterrent to trafficking by such persons. Upon conviction for trafficking, such persons should be sentenced in a manner which will deter further trafficking by them, protect the public from their pernicious activities, and restore them to legitimate and socially useful endeavors.

(2) Persons who habitually or professionally engage in commercial trafficking in controlled substances and prescription drugs should, upon conviction, be sentenced to substantial terms of imprisonment to shield the public from their predatory acts. However, persons addicted to or dependent on controlled substances should, upon conviction, be sentenced in a manner most likely to produce rehabilitation.

(3) Upon conviction, persons who casually use or experiment with controlled substances should receive special treatment geared toward rehabilitation. The sentencing of casual users and experimenters should be such as will best induce them to shun further contact with controlled substances and to develop acceptable alternatives to drug abuse.

History: 1971 c. **219; 1995** a. 448 ss. **107** to *110, 462, 463;* Stats. **1995 s. 961.001.**

SUBCHAPTER I

DEFINITIONS

961.01 Definitions. As used in this chapter:

(1) ''Administer", unless the context otherwise requires, means to apply a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by:

(a) A practitioner or, in the practitioner's presence, by the practitioner's authorized agent; or

(b) The patient or research subject at the direction and in the presence of the practitioner.

(2) "Agent", unless the context otherwise requires, means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser. "Agent" does not include

a common or contract carrier, public warehouse keeper or employee of the carrier or warehouse keeper while acting in the usual and lawful course of the carrier's or warehouse keeper's business.

(2m) (a) "Anabolic steroid" means any drug or hormonal substance, chemically or pharmacologically related to testosterone, except estrogens, progestin, and corticosteroids, that promotes muscle growth. The term includes all of the substances included in s. 961.18 (7), and any of their esters, isomers, esters of isomers, salts and salts of esters, isomers and esters of isomers, that are theoretically possible within the specific chemical designation, and if such esters, isomers, esters of isomers, salts and salts of esters, isomers and esters of isomers promote muscle growth.

(b) Except as provided in par. (c), the term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the United States Secretary of Health and Human Services for such administration.

(c) If a person prescribes, dispenses or distributes such steroid for human use, such person shall be considered to have prescribed, dispensed or distributed an anabolic steroid within the meaning of par. (a).

(4) "Controlled substance'' means a drug, substance or immediate precursor included in schedules I to V of subch. 11.

(4m) (a) "Controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance included in schedule I or II and:

1. Which has a stimulant, depressant, narcotic or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, narcotic or hallucinogenic effect on the central nervous system of a controlled substance included in schedule I or II; or

2. With respect to a particular individual, which the individual represents or intends to have a stimulant, depressant, narcotic or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, narcotic or hallucinogenic effect on the central nervous system of a controlled substance included in schedule I or II.

(b) "Controlled substance analog" does not include:

1. A controlled substance;

2. A substance for which there is an approved new drug application;

3. A substance with respect to which an exemption is in effect for investigational use by a particular person under 21 USC 355 to the extent that conduct with respect to the substance is permitted by the exemption; or

4. Any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance.

(5) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance.

(6) "Deliver" or "delivery", unless the context otherwise requires, means the actual, constructive or attempted transfer from one person to another of a controlled substance or controlled substance analog, whether or not there is any agency relationship.

(7) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare the substance for that delivery.

(8) "Dispenser" means a practitioner who dispenses.

(9) "Distribute" means to deliver other than by administering or dispensing a controlled substance or controlled substance analog.

(10) "Distributor" means a person who distributes.

(10m) "Diversion" means the transfer of any controlled substance from a licit to an illicit channel of distribution or use.

(11) (a) "Drug" means any of the following:

1. A substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States or official National Formulary or any supplement to any of them.

2. A substance intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or animals.

3. A substance, other than food, intended to affect the structure or any function of the body of humans or animals.

4. A substance intended for use as a component of any article specified in subd. 1., 2. or 3.

(b) "Drug" does not include devices or their components, parts or accessories.

(11m) "Drug enforcement administration" means the drug enforcement administration of the U.S. department of justice or its successor agency.

(12) "Immediate precursor" means a substance which the controlled substances board has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(12g) "Isomer" means an optical isomer, but in ss. 961.14 (2) (er) and (qs) and 961.16 (2) (b) 1. "isomer" includes any geometric isomer; in ss. 961.14 (2) (cg), (tg) and (xm) and 961.20 (4) (am) "isomer" includes any positional isomer; and in ss. 961.14 (2) (rj) and (4) and 961.18 (2m) "isomer" includes any positional or geometric isomer.

(12m) "Jail or correctional facility" means any of the following:

(a) A Type 1 prison, as defined in s. 301.01 (5).

(b) A jail, as defined in s. 302.30.

(c) A house of correction.

(d) A Huber facility under s. 303.09.

(e) A lockup facility, as defined in s. 302.30.

(f) A work camp under s. 303.10.

(13) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of, or to produce, prepare, propagate, compound, convert or process, a controlled substance or controlled substance analog, directly or indirectly, by extraction from substances of natural origin, chemical synthesis or a combination of extraction and chemical synthesis, including to package or repackage or the packaging or repackaging of the substance, or to label or to relabel or the labeling or relabeling of its container. "Manufacture" does not mean to prepare, compound, package, repackage, label or relabel or the preparation, compounding, packaging, repackaging, labeling or relabeling of a controlled substance:

(a) By a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(b) By a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale.

(14) "Marijuana" means all parts of the plants of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant,

its seeds or resin, including tetrahydrocannabinols. "Marijuana" docs include the mature stalks if mixed with other parts of the plant, but does not include fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake or the sterilized seed of the plant which is incapable of germination.

(14m) "Multiunit public housing project" means a public housing project that includes 4 or more dwelling units in a single parcel or in contiguous parcels.

(15) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) Opium and substances derived from opium, and any compound, derivative or preparation of opium or substances derived from opium, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation. The term does not include the isoquinoline alkaloids of opium.

(bm) Synthetic opiate, and any derivative of synthetic opiate, including any of their isomers, esters; ethers, esters and ethers of isomers, salts and salts of isomers, esters, ethers and esters and ethers of isomers that are theoretically possible within the specific chemical designation.

(c) Opium poppy, poppy straw and concentrate of poppy straw.

(d) Any compound, mixture or preparation containing any quantity of any substance included in pars. (a) to (c).

(16) "Opiate" means any substance having an addiction–forming or addiction–sustaining liability similar to morphine or being capable of conversion into a drug having addiction–forming or addiction–sustaining liability. "Opiate" includes opium, substances derived from opium and synthetic opiates. "Opiate" does not include, unless specifically scheduled as a controlled substance under s. 961.11, the dextrorotatory isomer of 3–methoxy–N–methylmorphinan and its salts (dextromethorphan). "Opiate" does include the racemic and Ievorotatory forms of dextromethorphan.

(17) "Opium poppy" means any plant of the species Papaver somniferum L., except its seeds.

(18) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(19) "Practitioner" means:

(a) A physician, advanced practice nurse, dentist, veterinarian, podiatrist, optometrist, scientific investigator or, subject to s. 448.21 (3), a physician assistant, or other person licensed, registered, certified or otherwise permitted to distribute, dispense, conduct research with respect to, administer or use in teaching or chemical analysis a controlled substance in the course of professional practice or research in this state.

(b) **A** pharmacy, hospital or other institution licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of professional practice or research in this state.

(20) "Production", unless the context otherwise requires, includes the manufacturing of a controlled substance or controlled substance analog and the planting, cultivating, growing or harvesting of a plant from which a controlled substance or controlled substance analog is derived.

(209) "Public housing project" means any housing project or development administered by a housing authority, as defined in s. 16.30 (2).

(20h) "Public transit vehicle" means any vehicle used for providing transportation service to the general public.

(20i) "Scattered.-site public housing project" means a public housing project that does not include 4 or more dwelling units in a single parcel or in contiguous parcels.

(21) "Ultimate user" means an individual who lawfully possesses a controlled substance for that individual's own use or for the use of a member of that individual's household or for administering to an animal owned by that individual or by a member of that individual's household.

(21m) "Vehicle" has the meaning given in s. 939.22 (44).

(22) "Youth center" means any center that provides, on a regular basis, recreational, vocational, academic or social services activities for persons younger than 21 years old or for those persons and their families.

History: 1971 c. 219; 1979 c. 89, 1981 c. 200, 206; 1983 a. 500 s. 43; 1989 a. 31; CSB 2.21; 1993 a. 87, 129.138, 184, 281.482; 1995 a. 281 s. 2; 1995 a. 448 ss. 112 to 143, 247, 248, 464 to 468; Stats. 1995 s. 961.01; 1997 a. 35 s. 338; 1997 a. 67; 1999 a. 85.

A constructive delivery under sub. (6) may he found if a single **actor** leaves a substance somewhere for later retrieval by another. State v. Wilson. 180 Wis. 2d 414, 509 N.W.2d 128 (Ct. App. 1993).

Day care centers are a subset of "youth centers" **as** defined in s. 961.01(22) and come within the definition of places listed in **s.** 961.49 (2). State **v.** Van Riper, 222 Wis. 2d 197, 586 N.W.2d 198 (Ct. App. 1998).

SUBCHAPTER II

STANDARDS AND SCHEDULES

961.11 Authority to control. (1) The controlled substances board shall administer this subchapter and may add substances to or delete or reschedule all substances listed in the schedules in ss. 961.14, 961.16, 961.18, 961.20 and 961.22 pursuant to the rule–making procedures of ch. 227.

(1m) In making a determination regarding a substance, the board shall consider the following:

(a) The actual or relative potential for abuse;

(b) The scientific evidence of its pharmacological effect, if known;

(c) The state of current scientific knowledge regarding the substance;

(d) The history and current pattern of abuse;

(e) The scope, duration and significance of abuse;

(f) The risk to the public health;

(g) The potential of the substance to produce psychological or physical dependence liability; and

(h) Whether the substance is an immediate precursor of a substance already controlled under this chapter.

(1r) The controlled substances board may consider findings of the federal food and drug administration or the drug enforcement administration as prima facie evidence relating to one or more of the determinative factors.

(2) After considering the factors enumerated in sub. (lm), the controlled substances board shall make findings with respect to them and promulgate a rule controlling the substance upon finding that the substance has a potential for abuse.

(3) The controlled substances board, without regard to the findings required by sub. (2) or ss. 961.13, 961.15, 961.17, 961.19 and 961.21 or the procedures prescribed by subs. (1), (1m), (1r) and (2), may add an immediate precursor to the same schedule in which the controlled substance of which it is an immediate precursor is included or to any other schedule. If the board designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(4) If a substance **is** designated, rescheduled or deleted as a controlled substance under federal law and notice thereof is given to the controlled substances board, the board by affirmative action shall similarly treat the substance under this chapter after the expiration of 30 days from the date of publication in the federal register of a final order designating the substance as a controlled substance or rescheduling or deleting the substance or from the date of issuance of an order of temporary scheduling under 21 USC 811

(h), unless within that 30-day period, the board or an interested party objects to the treatment of the substance. If no objection is made, the board shall promulgate, without making the determinations or findings required by subs. (1), (Im), (Ir) and (2) or s. 961.13, 961.15, 961.17, 961.19 or 961.21, a final rule, for which notice of proposed rule making is omitted, designating, rescheduling, temporarily scheduling or deleting the substance. If an objection is made the board shall publish notice of receipt of the objection and the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the board shall make a determination with respect to the treatment of the substance as provided in subs. (l), (1m), (1r) and (2) and shall publish its decision, which shall be final unless altered by statute. Upon publication of an objection to the treatment by the board, action by the board under this chapter is stayed until the board promulgates a rule under sub. (2).

(4m) The controlled substances board, by rule and without regard to the requirements of sub. (1m), may schedule a controlled substance analog as a substance in schedule I regardless of whether the substance is substantially similar to a controlled substance in schedule I or II, if the board finds that scheduling of the substance on an emergency basis is necessary to avoid an imminent hazard to the public safety and the substance is not included in any other schedule or no exemption or approval is in effect for the substance under 21 USC 355. Upon receipt of notice under s. 961.25, the board shall initiate scheduling of the controlled substance analog on an emergency basis under this subsection. The scheduling of a controlled substance analog under this subsection expires one year after the adoption of the scheduling rule. With respect to the finding of an imminent hazard to the public safety, the board shall consider whether the substance has been scheduled on a temporary basis under federal law or factors under sub. (Im) (d), (e) and (f), and may also consider clandestine importation, manufacture or distribution, and, if available, information concerning the other factors under sub. (1m). The board may not promulgate a rule under this subsection until it initiates a rule-making proceeding under subs. (1), (1m), (Ir) and (2) with respect to the controlled substance analog. A rule promulgated under this subsection lapses upon the conclusion of the rule-making proceeding initiated under subs. (1), (1m), (1r) and (2) with respect to the substance.

(5) The authority of the controlled substances board to control under this section does not extend to intoxicating liquors, as defined in s. 139.01 (3), to fermented malt beverages as defined in s. 125.02, or to tobacco.

(6) (a) The controlled substances board shall not have authority to control a nonnarcotic substance if the substance may, under the federal food, drug and cosmetic act and the laws of this state, be lawfully sold over the counter without a prescription.

(b) If the board finds that any nonnarcotic substance barred from control under this chapter by par. **(a)** is dangerous to or is being so used as to endanger the public health and welfare, it may request the department of justice in the name of the state to seek a temporary restraining order or temporary injunction under ch. 813 to either ban or regulate the sale and possession of the substance. The order or injunction shall continue until the adjournment of the legislature convened next following its issuance. In making its findings as to nonnarcotic substances under this paragraph, the board shall consider the items specified in sub. (1m).

History: 1971 c. 219, 307; Sup. Ct. Order, 67 Wis. 2d 585,774 (1975); 1981 c. 79 s. 18; 1983 a. 189 s. 329 (13); 1995 a. 448 ss. 145 to 152,469.470; Stats. 1995 s. 961.11.

Cross Reference: See also **CSB.** Wis. adm. code.

961.115 Native American Church exemption. This chapter does not apply to the nondrug use of peyote and mescaline in the bona fide religious ceremonies of the Native American Church.

History: 1971 c. 219; 1995 a. 448 s. 153; Stats. 1995 s. 961.115.

Because the exemption is based upon the unique cultural heritage of Native Americans, it is not an unconstitutional classification. State v. Peck, 143 Wis. 2d 624.422 N.W.2d 160 (Ct. App. 1988).

961.12 Nomenclature. The controlled substances listed in or added to the schedules in ss. 961.14, 961.16, 961.18, 961.20 and 961.22 may be listed or added by any official, common, usual, chemical or trade name used for the substance.

History: 1971 c. 219; 1995 a. 448 s. 154; Stats. 1995 s. 961.12.

961.13 Schedule I tests. (1m) The controlled substances board shall add a substance to schedule I upon finding that the substance:

(a) Has high potential for abuse;

(b) Has no currently accepted medical use in treatment in the United States; and

(c) Lacks accepted safety for use in treatment under medical supervision.

(2m) The controlled substances board may add a substance to schedule I without making the findings required under sub. **(1m)** if the substance is controlled under schedule I of 21 USC 812 (c) by a federal agency as the result of an international treaty, convention or protocol.

History: 1971 c. 219; 1995 a. 448 ss. 155, 156,471; Stats. 1995 s. 961.13.

961.14 Schedule I. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in schedule I:

(2) SYNTHETIC OPIATES. Any material, compound, mixture or preparation which contains any quantity of any of the following synthetic opiates, including any of their isomers, esters, ethers, esters and ethers of isomers, salts and salts of isomers, esters, ethers and esters and ethers of isomers that are theoretically possible within the specific chemical designation:

(a) **Acetyl-alpha-methylfentanyl** (N-[1-(1-methyl-2-phenylethyl)-4-piperidinyl]-N-phenylacetamide);

(ag) Acetylmethadol;

(am) Allylprodine;

(b) Alphacetylmethadol (except levo-alphacetylmethadol (LAAM));

(bm) Alphameprodine;

(c) Alphamethadol;

(cd) Alpha-methylfentanyl (N-[1-(1-methyl-2-phenylethyl)-4-piperidinyl]-N-phenylpropanamide);

(cg) Alpha-methylthiofentanyl (N-{1-[1-methyl-2-(2-thienyl)ethyl]-4-piperidinyl}-N-phenylpropanamide);

(cm) Benzethidine;

(d) Betacetylmethadol;

(dg) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenylethyl)-4-piperidinyl]-N-phenylpropanamide);

(dm) Betameprodine;

(e) Betamethadol;

(em) Betaprodine;

(er) Beta-hydroxy-3-methylfentanyl (N-[1-(2-hydroxy-2-phenylethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide);

(f) Clonitazene;

(fm) Dextromoramide;

(gm) Diampromide;

(h) Diethylthiambutene;

(hg) Difenoxin;

(hm) Dimenoxadol;

(j) Dimepheptanol;

(jm) Dimethylthiambutene;

(k) Dioxaphetyl butyrate;

(km) Dipipanone;

(m) Ethylmethylthiambutene;

(mm) Etonitazene;

(n) Etoxeridine;

(nm) Furcthidine;
(p) Hydroxypethidine;
(pm) Ketobemidone;
(q) Levomoramide;
(qm) Levophenacylmorphan;
(qs) 3–methylfentanyl (N–[3–methyl–1–(2–phenylethyl)–4–piperidinyl]–N–phenylpropanamide);
(r) Morphcridine;
(rg) MPPP (1–methyl–4–phenyl–4–propionoxypiperidine);
(rj) 3–inethylthiofentanyl (N–{3–methyl–1–[2–(2–thienyl)ethyl]–4–piperidinyl}–N–phenylpropanamide);
(rm) Noracymethadol;
(S) Norievorphanol;
(sm) Normethadone;
(t) Norpipanone;
(tg) Para–fluorofentanyl (N–[1–(2–phenylethyl)–4–piperidinyl]–N–(4–fluorophenyl)propanamide);
(tm) Phenadoxone;
(u) Phcnampromide;
(um) Phenomorphan;
(v) Phenoperidine;
(vg) PEPAP (1–(2–phenylethyl)–4–phenyl–4–acetoxypiperidine);
(vm) Piritramide;
(w) Proheptazine;
(wm) Properidine;
(wn) Propiram;
(x) Racemoramide;
(xm) Thiofentanyl (N–{1–[2–(2–thienyl)ethyl]–4–piperidinyl}–N–phenylpropanamide);
(xr) Tilidine;
(y) Trimeperidine.

(3) SUBSTANCES DERIVED FROM OPIUM. Any material, compound, mixture or preparation which contains any quantity of any of the following substances derived from opium, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Acetorphine;
(b) Acetyldihydrocodeine;
(c) Benzylmorphine;
(d) Codeine methylbromide;
(e) Codeine–N–oxide;
(f) Cyprenorphine;
(g) Desomorphine;
(h) Dihydromorphine;
(hm) Drotebanol;
(j) Etorphine, except its hydrochloride salts;
(k) Heroin;
(m) Hydromorphinol;
(n) Methyldesorphine;
(p) Methyldihydromorphinc;
(q) Morphine methylbromide;
(r) Morphine methylsulfonate;
(s) Morphine–N-oxide;
(t) Myrophine;
(u) Nicocodeine;
(v) Nicomorphine;
(w) Normorphine;
(x) Pholcodine;
(y) Thebacon.

(4) HALLUCINOGENIC SUBSTANCES. Any material, compound, mixture or preparation which contains any quantity of any of the following hallucinogenic substances, including any of their salts, isomers and salts of isomcrs that are theoretically possible within the specific chemical designation, in any form including a substance, salt. isomer or salt of an isomer contained in a plant. obtained from a plant or chemically synthesized:

(a) 3,4–methylenedioxyamphetamine, commonly known as "MDA";
(ag) 3,4–methylenedioxyethylamphetamine, commonly known as "MDE";
(am) 3,4–methylenedioxymethamphetamine, commonly known as "MDMA";
(ar) N–hydroxy–3,4–methylenedioxyamphetamine;
(b) 5–methoxy–3,4–methylenedioxyamphetamine;
(bm) 4–ethyl–2,5–dimethoxyamphetamine, commonly known as "DOET";
(c) 3,4,5–trimethoxyamphetamine;
(cm) Alpha–ethyltryptamine;
(d) Bufotcnine;
(e) Diethyltryptamine;
(f) Dimethyltryptamine;
(g) 4–methyl–2,5–dimethoxyamphetamine, commonly known as "STP;
(h) Ibogaine;
(j) Lysergic acid diethylamide, commonly known as "LSD";
(m) Mescaline, in any form, including mescaline contained in peyote. obtained from peyote or chemically synthesized:
(mn) Parahexyl (3–hexyl–1–hydroxy–7, 8, 9, 10–tetrahydro–6, 6, 9–trimethyl–6H–dibenzo(b, d)pyran);
(n) Phencyclidine, commonly known as **"PCP";**
(p) N-ethyl–3–piperidyl benzilate;
(q) N–methyl–3–piperidyl benzilate;
(r) Psilocybin;
(s) Psilocin;
(t) Tetrahydrocannabinols, commonly known as "THC", in any form including tetrahydrocannabinols contained in marijuana, obtained from marijuana or chemically synthesized;
(u) 1–[1–(2–thienyl)cyclohexyl]piperidine, which is the thiophene analog of phencyclidine;
(ud) 1–[1–(2–thienyl)cyclohexyl]pyrrolidine, which is the thiophene pyrrolidine analog of phencyclidine;
(ug) N–ethyl–1–phenylcyclohexylamine, which **is** the ethylamine analog of phencyclidine;
(ur) 1–(1–phenylcyclohexyl)pyrrolidine, which is the pyrrolidine analog of phencyclidine;
(v) 2,5–dimethoxyamphetamine;
(w) 4–bromo–2,5–dimethoxyamphetamine, commonly known as "DOB';
(wg) 4–bromo–2,5–dimethoxy–beta–phenylethylamine, commonly known as **"2C–B"** or "Nexus";
(x) 4–methoxyamphetamine.

(5) DEPRESSANTS Any material, compound, mixture or preparation which contains any quantity of any of the following substances having a depressant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(ag) Gamma–hydroxybutyric acid (commonly known as gamma hydroxybutyrate or "GHB") and gamma–butyrolactone.
(am) Mecloqualone.
(b) Mcthaqualonc.

(6) IMMEDIATE PRECURSORS Any material, compound, mixture or preparation which contains any quantity of any of the following substances or their salts:

(a) Immediate precursors to phencyclidine:
1. 1-phenylcyclohexylainine.
2. 1-piperidinocyclohexanecarbonitrile.

(7) STIMULANTS. Any material, compound, mixture or preparation which contains any quantity of any of the following substances having a stimulant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(ag) Cathinone.

(am) Aminorex.

(b) Fenethylline.

(c) N–ethylamphetamine.

(d) 4–methylaminorex.

(e) N,N–dimethylamphetamine.

(L) Methcathinone.

(p) 4–methylthioamphetamine, commonly known as "4–MTA."

History: 1971 c. 219; 1981 c. 206; CSB 2.16, 2.15, 2.17, 2.18, 2.19, 2.20; 1989 a. 121; CSR 2.21; 1993 a. 98. 118; CSB 2.22; 1995 a. 225; 1995 a. 448 ss. 157 to 165; Stats. 1995 s. 961.14; 1997 a. 220; 1999 a. 21; 2001 a. 16.

NOTE: See 1979–80 Statutes and 1993–94 Statutes for notes on actions by controlled substances board under s. 161.11 (1), 1993 Stats.

A chemical test nerd not he specifically for marijuana in order to be probative beyond a reasonable doubt. State v. Wind, 60 Wis. 2d 267, 208 N.W.2d 357 (1973).

THC is properly classified as Schedule I substance. State **v.** Olson, 127 Wis. 2d **412.380** N.W.2d 375 (Ct. App. 1985).

Stems and branches supporting marijuana leaves or buds **are** not "mature stalks" under sub. (14). State v. Martinez, 210 Wis. 2d 397, 563 N.W.2d 922 (Ct. App. 1997).

961.15 Schedule II tests. (1m) The controlled substances board shall add a substance to schedule II upon finding that:

(a) The substance has high potential for abuse;

(b) The substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and

(c) The abuse of the substance may lead to severe psychological or physical dependence.

(2m) The controlled substances board may add a substance to schedule II without making the findings required under sub. (1m) if the substance is controlled under schedule II of 21 USC 812 (c) by a federal agency as the result of an international treaty, convention or protocol.

History: 1971 **c. 219;** 1995 a. 448 ss. 166, 167, 472; Stats. 1995 **s.** 961.15.

961.16 Schedule II. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in schedule II:

(2) SUBSTANCES OF PLANT ORIGIN. Any material, compound, mixture or preparation which contains any quantity of any of the following substances in any form, including a substance contained in a plant, obtained from a plant, chemically synthesized or obtained by a combination of extraction from a plant and chemical synthesis:

(a) Opium and substances derived from opium, and any salt, compound, derivative or preparation of opium or substances derived from opium. Apomorphine, dextrorphan, nalbuphine, butorphanol, nalmefene, naloxone and naltrexone and their respective salts and the isoquinoline alkaloids of opium and their respective salts are excluded from this paragraph. The following substances, and any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation, are included in this paragraph:

1. Opium, including raw opium, opium extracts, opium fluid extracts, powdered opium, granulated opium and tincture of opium.

2. Opium poppy and poppy straw.

3. Concentrate of poppy straw, which is the crude extract of poppy straw in either liquid, solid or powder form containing the phenanthrene alkaloids of the opium poppy.

4. Codeine.

4m. Dihydrocodeine.

4r. Dihydroctorphine.

5. Ethylmorphine.

6. Etorphine hydrochloride.

7. Hydrocodone, also known as dihydrocodeinone.

8. Hydromorphonc, also known as dihydromorphinone.

9. Metopon.

10. Morphine.

11. Oxycodone.

12. Oxymorphone.

13. Thebaine.

(h) Coca leaves and any salt, compound, derivative or preparation of coca leaves. Decocainized coca leaves or extractions which do not contain cocaine or ecgonine are excluded from this paragraph. The following substances and any of their salts, esters, isomers and salts of esters and isomers that are theoretically possible within the specific chemical designation, are included in this paragraph:

1. Cocaine.

2. Ecgonine.

(3) SYNTHETIC OPIATES. Any material, compound, mixture or preparation which contains any quantity of any of the following synthetic opiates, including any of their isomers, esters, ethers, esters and ethers of isomers, salts and salts of isomers, esters, ethers and esters and ethers of isomers that are theoretically possible within the specific chemical designation:

(a) Alfentanil;

(am) Alphaprodine;

(b) Anileridine;

(c) Bezitramide;

(cm) Carfentanil;

(e) Diphenoxylate;

(f) Fentanyl;

(g) lsomethadone;

(gm) Levo–alphacetylmethadol (LAAM);

(h) Levomethorphan;

(j) Levorphanol;

(k) Mependine, also known as pethidine;

(m) Meperidine—Intermediate—A, 4–cyano–I–methyl4 phenylpiperidine;

(n) Meperidine—Intermediate—B, ethyl–4–phenylpiperidine–4–carboxylate;

(p) Meperidine—Intermediate—C, 1–methyl–4–phenylpiperidine4-carboxylic acid;

(q) Metazocine;

(r) Methadone;

(s) Methadone—Intermediate, 4–cyano–2–dimethylamino–4, 4–diphenylbutane;

(t) Moramide—Intermediate, 2–methyl–3–morpholino–1, 1–diphenylpropanecarboxylic acid;

(u) Phenazocine;

(v) Piminodine;

(w) Racemethorphan;

(x) Racemorphan;

(xm) Remifentanil;

(y) Sufentanil.

(5) STIMULANTS. Any material, compound, mixture, or preparation which contains any quantity of any of the following substances having a stimulant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Amphetamine.

(b) Methamphetamine.

(c) Phenmetrazine.

(d) Methylphenidate.

(7) DEPRESSANTS. Any material, compound, mixture, or preparation which contains any quantity of any of the following substances having a depressant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Amobarbital;

(am) Glutethimide;

(b) Pentobarbital;

(c) Secobarbital.

(8) IMMEDIATE PRECURSORS. Any material, compound, mixture or preparation which contains any quantity of the following substances:

(a) **An** immediate precursor to amphetamine or methamphetamine:

1. Phenylacetone, commonly known as "P2P".

(10) HALLUCINOGENIC SUBSTANCES. (b) Nabilone (another name for nabilone is (+)-trans-3-(1,1-dimethylheptyl)-6, 6a, 7, 8, 10, 10a-hexahydro-1-hydroxy-6, 6-dimethyl-9*H*-dibenzo [b,d] pyran-9-one).

History: 1971 c. 219; 1981 c. 6,206; CSB 2.16, 2.17, 2.19; 1989 a. 121; CSB 2.21; 1993 a. 98; CSB 2.22; 1995 a. 448 ss. 168 to 178,473; Stats. 1995 s. 961.16; CSB 2.25; CSB 2.26.

NOTE: See 1979–80 Statutes and 1993–94 Statutes for notes on actions by controlled substances board under s. 161.11 (1), 1993 Stats.

At a preliminary hearing, the state must show that a substance **was** probably l-cocaine rather than d-cocaine. State **v.** Russo. 101 Wis. 2d 206,303 N.W.2d 846 (Ct. App. 1981).

961.17 Schedule III tests. (1m) The controlled substances board shall add a substance to schedule III upon finding that:

(a) The substance has a potential for abuse less than the substances included in schedules I and II;

(b) The substance has currently accepted medical use in treatment in the United States; and

(c) Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

(2m) The controlled substances board may add a substance to schedule III without making the findings required under sub. (1m) if the substance is controlled under schedule III of **21** USC 812 (c) by a federal agency as the result of an international treaty, convention or protocol.

History: 1971 c 219; 1995 a. 448 ss. 179,180,474; Stats. 1995 s. 961.17.

961.18 Schedule III. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in schedule III:

(2m) STIMULANTS Any material, compound, mixture, or preparation which contains any quantity of any of the following substances having a stimulant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Benzphetamine;

(b) Chlorphentermine;

(c) Clortermine;

(e) Phendimetrazine.

(3) DEPRESSANTS. Any material, compound, mixture or preparation which contains any quantity of any of the following substances having a depressant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Any substance which contains a derivative of barbituric acid;

(b) Chlorhexadol;

(d) Lysergic acid;

(e) Lysergic acid amide;

(f) Methyprylon;

(h) Sulfondiethylmethane;

(j) Sulfonethylmethane;

(k) Sulfonmethanc;

(km) Tiletamine and Zolazepam in combination;

(m) Any compound, mixture, or preparation containing any of the following drugs and one or more other active medicinal ingredients not included in any schedule:

1. Amobarbital.
2. Secobarbital.
3. Pentobarbital.

(n) Any of the following drugs in suppository dosage form approved by the federal food and drug administration for marketing only as a suppository:

1. Amobarbital.
2. Secobarbital.
3. Pentobarbital.

(4) OTHER SUBSTANCES Any material, compound, mixture or preparation which contains any quantity of any of the following substances, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(ak) Ketamine.

(an) Nalorphine.

(4m) HALLUCINOGENIC SUBSTANCES. Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. food and drug administration approved drug product. (Other names for dronabinol are (6aR-trans)-6a, 7, 8, 10a-tetrahydro-6, 6, 9-trimethyl-3-pentyl-6H-dibenzo(b, d)pyran-1-ol, and (-)-delta-9-(trans)-tetrahydrocannabinol.)

(5) NARCOTIC DRUGS Any material, compound, mixture or preparation containing any of the following narcotic drugs or their salts, isomers or salts of isomers, calculated as the free anhydrous base or alkaloid, in limited quantities as follows:

(a) Not more than 1.8 grams of codeine per 100 milliliters or per 100 grams or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

(b) Not more than 1.8 grams of codeine per 100 milliliters or per 100 grams or not morc than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(c) Not more than 300 milligrams of hydrocodone per 100 milliliters or per 100 grams or not more than 15 milligrams per dosage unit, with a four-fold or greater quantity of an isoquinoline alkaloid of opium.

(d) Not more than 300 milligrams of hydrocodone per 100 milliliters or per 100 grams or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(e) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or per 100 grams or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(f) Not more than 300 milligrams of ethylmorphine per 100 milliliters or per 100 grams or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts.

(g) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(h) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(6) EXCEPTIONS The controlled substances board may except by rule any compound, mixture or preparation containing any stimulant or depressant substance included in sub. (2m) or (3)

from the application of all or any part of this chapter if the compound, mixture or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(7) ANABOLIC STEROIDS. Any material, compound, mixture, or preparation containing any quantity of any of the following anabolic steroids. including any of their esters, isomers, esters of isomers, salts and salts of esters, isomers and esters of isomers that are theoretically possible within the specific chemical designation:

(a) Boldenone;
(b) 4–chlorotestosterone, which is also called clostebol;
(c) Dehydrochloromethyltestosterone;
(d) 4–dihydrotestosterone, which is also called stanolone;
(e) Drostanolone;
(f) Ethylestrenol;
(g) Fluoxymesterone;
(h) Formebulone, which is also called fromebolone;
(i) Mesterolone;
(j) Methandienone, which is also called methandrostenolone;
(k) Methandriol;
(L) Methenolone;
(m) Methyltestosterone;
(n) Mibolerone;
(o) Nandrolone;
(p) Norethandrolone;
(q) Oxandrolone;
(r) Oxymesterone;
(s) Oxymetholone;
(t) Stanozolol;
(u) Testolactone;
(v) Testosterone;
(w) Trenbolone.

History: 1971 c. 219; 1981 c. 6; 1981 c. 206 ss. 32 to 40, 57; CSB 2.19, 2.21; 1995 a. 448 ss. 181 to 200, 475, 476; Stats. 1995 s. 961.18; 1997 a. 220; CSB 2.25.
NOTE: See 1993–94 Statutes for notes on actions by controlled substances board under s. 161.11 (1), 1993 Stats.

961.19 Schedule IV tests. (1m) The controlled substances board shall add a substance to schedule IV upon finding that:

(a) The substance has a low potential for abuse relative to substances included in schedule III;

(b) The substance has currently accepted medical use in treatment in the United States; and

(c) Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances included in schedule III.

(2m) The controlled substances board may add a substance to schedule IV without making the findings required under sub. (1m) if the substance is controlled under schedule IV of 21 USC 812 (c) by a federal agency as the result of an international treaty, convention or protocol.

History: 1971 c. 219: 1995 a. 448 ss. 201, 202,477; Stats. **1995 s. 961.19.**

961.20 Schedule IV. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in schedule IV:

(2) DEPRESSANTS. Any material, compound, mixture or preparation which contains any quantity of any of the following substances having a depressant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Alprazolam;
(am) Barbital;
(ar) Bromazepam;
(av) Camazepam;
(b) Chloral betaine;
(c) Chloral hydrate;
(cd) Clobazam;
(cg) Clotiazepam;
(cm) Chlordiazepoxide;
(cn) Clonazepam;
(co) Cloxazolam;
(cp) Clorazepate;
(cq) Delorazepam;
(cr) Diazepam;
(cs) Dichloralphenazone;
(cu) Estazolam;
(d) Ethchlorvynol;
(e) Ethinamate;
(ed) Ethyl loflazepate;
(eg) Fludiazepam;
(ej) Flunitrazepam;
(em) Flurazepam;
(eo) Halazepam;
(ep) Haloxazolam;
(eq) Ketazolam;
(er) Lorazepam;
(es) Loprazolam;
(eu) Lormetazepam;
(ew) Mebutamate;
(ey) Medazepam;
(f) Methohexital;
(g) Meprobamate;
(h) Methylphenobarbital, which is also called mephobarbital;
(hg) Midazolam;
(hh) Nimetazepam;
(hj) Nitrazepam;
(hk) Nordiazepam;
(hm) Oxazepam;
(hr) Oxazolam;
(j) Paraldehyde;
(k) Petrichloral;
(m) Phenobarbital;
(md) Pinazepam;
(mg) Prazepam;
(mm) Quazepam;
(n) Temazepam;
(ng) Tetrazepam;
(nm) Triazolam;
(o) Zaleplon;
(p) Zolpidem.

(2m) STIMULANTS. Any material, compound, mixture, or preparation which contains any quantity of any of the following substances having a stimulant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Diethylpropion.
(ad) Cathme.
(ag) N,N–dimethyl–1,2–diphenylethylamine, commonly known as "SPA".
(ak) Ephedrine, if ephedrine is the only active medicinal ingredient or if there are only therapeutically insignificant quantities of another active medicinal ingredient.
(ar) Fencamfamine.

(at) Fenproporex.

(bm) Mazindol.

(br) Mefenorex.

(bu) Modafinil.

(c) Pemoline, including its organomctallic complexes and chelate~.

(d) Phentermine.

(e) Pipradrol.

(f) Sibutramine.

(3) NARCOTIC DRUGS CONTAINING NONNARCOTIC ACTIVE MEDICINAL INGREDIENTS. Any compound, mixhire or preparation containing any of the following narcotic drugs or their salts, isomers or salts of isomers, in limited quantities as set forth below, calculated as the free anhydrous base or alkaloid, which also contains one or more nonnarcotic, active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(a) Not more than 1.0 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(4) OTHER SUBSTANCES. Any material, compound, mixture or preparation which contains any quantity of any of the following substances or their salts:

(a) Dextropropoxyphene (Alpha–(+)–4–dimethylamino–1, 2–diphenyl–3–methyl–2–propionoxybutane).

(am) Fenfluramine, including any of its isomers and salts of isomers.

(b) Pentazocine, including any of its isomers and salts of isomers.

(c) Butorphanol, including any of its isomers and salts of isomers.

(5) EXCEPTIONS. The controlled substances board may except by rule any compound, mixture or preparation containing any depressant substance included in sub. (2) from the application of all or any part of this chapter if the compound, mixture or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

History: 1971 *c.* 219; 1979 c. **32; 1981** c. **206** ss. **34m.** 41 *to* **52; CSB** 2.15, 2.19, **2.21; 1993 a. 468;** *1995* **a. 448** ss. **203 to 220,478,479; Stats. 1995 s. 961.20; CSB** 2.24, 2.25, 2.28.

NOTE: See 1979–80 Statutes and 1993–94 Statutes for notes on actions by controlled substances board under s. 161.11 (1), 1993 Stats.

961.21 Schedule V tests. (1m) The controlled substances board shall add a substance to schedule V upon finding that:

(a) The substance has low potential for abuse relative to the controlled substances included in schedule IV;

(b) The substance has currently accepted medical use in treatment in the United States; and

(c) The substance has limited physical dependence or psychological dependence liability relative to the controlled substances included in schedule IV.

(2m) The controlled substances board may add a substance to schedule V without making the findings required by sub. (1m) if the substance is controlled under schedule V of 21 USC 811 (c) by a federal agency as the result of an international treaty, convention or protocol.

History: 1971 c. **219;** 1995 **a. 438** ss. **221,222,480; Stats.** 1995 **s. 961.21.**

961.22 Schedule V. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in schedule V.

(1m) NARCOTIC DRUGS. Any material, compound, mixhire or preparation containing any quantity of any of the following substances, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Buprenorphine.

(2) NARCOTIC DRUGS CONTAINING NONNARCOTIC ACTIVE MEDICINAL INGREDIENTS Any compound, mixture or preparation containing any of the following narcotic drugs or their salts, isomers or salts of isomers, in limited quantities as set forth below, calculated as the free anhydrous base or alkaloid, which also contains one or more nonnarcotic, active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

(a) Not more than *200* milligrams of codeine per 100 milliliters or per 100 grams.

(b) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

(c) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

(d) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

(e) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

(f) Not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(3) STIMULANTS. Any material, compound, mixture or preparation which contains any quantity of any of the following substances having a stimulant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Pyrovalerone.

History: 1971 c. 219; **1981** c. 206; CSB 2.15; 1985 a. 135; CSB 2.17; 1995 a. 448 ss. **223 to 227,481; Stats.** 1995 s. **961.22.**

961.23 Dispensing of schedule V substances. The dispensing of schedule V substances is subject to the following conditions:

(1) That they be dispensed and sold in good faith as a medicine, and not for the purpose of evading this chapter.

(2) That they be sold at retail only by a registered pharmacist when sold in a retail establishment.

(3) That, when sold in a retail establishment, they bear the name and address of the establishment on the immediate container of said preparation.

(4) That any person purchasing such a substance at the time of purchase present to the seller that person's correct name and address. The seller shall record the name and address and the name and quantity of the product sold. The purchaser and the seller shall sign the record of this transaction. The giving of a false name or false address by the purchaser shall be prima facie evidence of a violation of s. 961.43 (1) (a).

(5) That no person may purchase more than 8 ounces of a product containing opium or more than 4 ounces of a product containing any other schedule V substance within a 48–hour period without the authorization of a physician, dentist or veterinarian nor may more than 8 ounces of a product containing opium or more than 4 ounces of a product containing any other schedule V substance be in the possession of any person other than a physician, dentist, veterinarian or pharmacist at any time without the authorization of a physician, dentist or veterinarian.

History: 1971 c. **219; 1973** *c.* **12 s. 37; 1981** *c.* **206;** 1993 **a. 482;** 1995 **a. 448 s. 228; Stats.** 1995 s. **961.23.**

961.24 Publishing of updated schedules. The controlled substances board shall publish updated schedules annually. The failure of the controlled substances board to publish an updated schedule under this section is not a defense in any administrative or judicial proceeding under this chapter.

History: 1971 *c.* 219; 1993 **a. 213;** 1995 **a. 448 s.** 229; **Stats.** 1995 s. 961.24.

961.25 Controlled substance analog treated as a schedule I substance. A controlled substance analog, to the extent it is intended for human consumption, shall be treated. for the purposes of this chapter, as a substance included in schedule I, unless a different treatment is specifically provided. No later than 60 days after the commencement of a prosecution concerning a controlled substance analog, the district attorney shall provide the controlled substances board with information relevant to emergency scheduling under s. 961.11 (4m). After a final determination by the controlled substances board that the controlled substance analog should not be scheduled, no prosecution relating to that substance as a controlled substance analog may be commenced or continued.

History: 1995 a. 448.

SUBCHAPTER III

REGULATION OF MANUFACTURE, DISTRIBUTION AND DISPENSING OF CONTROLLED SUBSTANCES

961.31 Rules. The pharmacy examining board may promulgate rules relating to the manufacture, distribution and dispensing of controlled substances within this state.

History: 1971 **c. 219; 1995 a. 448 s. 231;** Stats. **1995** s. 961.31.

Cross Reference: See also ch. Phar 8, Wis. **adm. code.**

961.32 Possession authorization. (1) Persons registered under federal law to manufacture, distribute, dispense or conduct research with controlled substances may possess, manufacture, distribute, dispense or conduct research with those substances in this state to the extent authorized by their federal registration and in conformity with the other provisions of this chapter.

(2) The following persons need not be registered under federal law to lawfully possess controlled substances in this state:

(a) An agent or employee of any registered manufacturer, distributor or dispenser of any controlled substance if the agent or employee is acting in the usual course of the agent's or employee's business or employment;

(b) **A** common or contract carrier or warehouse keeper, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment;

(c) An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a schedule V substance.

(d) Any person exempted under federal law, or for whom federal registration requirements have been waived.

History: 1971 **c.** 219, 336; **1983 a. 500 s.** 43; **1993 a 482; 1995 a. 448 s. 232;** Stats. **1995 s. 961.32.**

A doctor or dentist who dispenses drugs to a patient within the course of professional practice is not subject to criminal liability. State v. Townsend, 107 **Wis. 2d 24,** 318 N.W.2d 361 (1982).

961.335 Special use authorization. (1) Upon application the controlled substances board may issue a permit authorizing a person to manufacture, obtain, possess, use, administer or dispense a controlled substance for purposes of scientific research, instructional activities, chemical analysis or other special uses, without restriction because of enumeration. No person shall engage in any such activity without a permit issued under this section. except that an individual may be designated and authorized to receive the permit for a college or university department, research unit or similar administrative organizational unit and students, laboratory technicians, research specialists or chemical analysts under his or her supervision may be permitted possession and use of controlled substances for these purposes without obtaining an individual permit.

(2) A permit issued under this section shall be valid for one year from the date of issue.

(3) The fee for a permit under this section shall be an amount determined by the controlled substances board but shall not exceed $25. No fee may be charged for permits issued to employees of state agencies or institutions.

(4) Permits issued under this section shall be effective only for and shall specify:

(a) The name and address of the pennittee.

(b) The nahrre of the project authorized by the permit.

(c) The controlled substances to be used in the project, by name if included in schedule I, and by name or schedule if included in any other schedule.

(d) Whether dispensing to human subjects is authorized.

(5) A permit shall be effective only for the person, substances and project specified on its face and for additional projects which derive directly from the stated project. Upon application, a valid permit may be amended to add a further activity or to add further substances or schedules to the project permitted thereunder. The fee for such amendment shall be determined by the controlled substances board but shall not exceed $5.

(6) Persons who possess a valid permit issued under this section are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization.

(7) The controlled substances board may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative or other proceeding to identify or to identify to the board the individuals who are the subjects of research for which the authorization was obtained.

(8) The controlled substances board may promulgate rules relating to the granting of special use permits including, but not limited to, requirements for the keeping and disclosure of records other than those that may be withheld under sub. (7), submissions of protocols, filing of applications and suspension or revocation of permits.

(9) The controlled substances board may suspend or revoke a permit upon a finding that there is a violation of the rules of the board.

History: 1971 **c. 219; 1975 c. 110,199; 1977 c. 26; 1995 a. 448 s. 233; Stats. 1995 s. 961.335.**

961.34 Controlled substances therapeutic research. Upon the request of any practitioner, the controlled substances board shall aid the practitioner in applying for and processing an investigational drug permit for marijuana under 21 USC 355 (i). If the federal food and drug administration issues an investigational drug permit, the controlled substances board shalt approve which pharmacies can distribute the marijuana to patients upon written prescription. Only pharmacies located within hospitals are eligible to receive the marijuana for distribution. The controlled substances board shall also approve which practitioners can write prescriptions for the marijuana.

History: 1981 **c. 193; 1983 a.** 189 **s. 329 (18);** 1985 **a. 146 s. 8; 1995 a. 448 ss. 16** to **19;** Stats. **1995 s.** 961.34.

961.36 Controlled substances board duties relating to diversion control and prevention, compliance with controlled substances law and advice and assistance. (1) The controlled substances board shall regularly prepare and make available to state regulatory, licensing and law enforcement agencies descriptive and analytic reports on the potential for diversion and actual patterns and trends of distribution, diversion and abuse within the state of certain controlled substances the board selects that are listed ins. 961.16, 961.18, 961.20 or 961.22.

(Im) At the request of the department of regulation and licensing or a board, examining board or affiliated credentialing board in the department of regulation and licensing, the controlled substances board shall provide advice and assistance in matters

related to the controlled substances law to the department or to the board, examining board or affiliated credentialing board in the department making the request for advice or assistance.

(2) The controlled substances board shall enter into written agreements with local, state and federal agencies to improve the identification of sources of diversion and to improve enforcement of and compliance with this chapter and other laws and regulations pertaining to unlawful conduct involving controlled substances. An agreement must specify the roles and responsibilities of each agency that has information or authority to identify, prevent or control drug diversion and drug abuse. The board shall convene periodic meetings to coordinate a state diversion prevention and control program. The board shall assist and promote cooperation and exchange of information among agencies and with other states and the federal government.

(3) The controlled substances board shall evaluate the outcome of its program under this section and shall annually submit a report to the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (3), on its findings with respect to its effect on distribution and abuse of controlled substances, including recommendations for improving control and prevention of the diversion of controlled substances.

History: 1981 c. 200; 1987 a. 186; 1995 a. 305 ss. 2.3; 1995 a. 448 s. 234; Stats. 1995 s. 961.36: 1997 a. 35 s. 339.

961.38 Prescriptions. (1g) In this section, "medical treatment" includes dispensing or administering a narcotic drug for pain, including intractable pain.

(1r) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance included in schedule II may be dispensed without the written prescription of a practitioner.

(2) In emergency situations, as defined by rule of the pharmacy examining board, schedule II drugs may be dispensed upon oral or electronic prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with rules of the pharmacy examining board promulgated under s. 961.31. No prescription for a schedule II substance may be refilled.

(3) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in schedule III or IV, which is a prescription drug, shall not be dispensed without a written, oral or electronic prescription of a practitioner. The prescription shall not be filled or refilled except as designated on the prescription and in any ease not more than 6 months after the date thereof, nor may it be refilled more than 5 times, unless renewed by the practitioner.

(4) A substance included in schedule V may be distributed or dispensed only for a medical purpose, including medical treatment or authorized research.

(4g) A practitioner may dispense or deliver a controlled substance to or for an individual or animal only for medical treatment or authorized research in the ordinary course of that practitioner's profession.

(4r) A pharmacist is immune from any civil or criminal liability and from discipline under s. 450.10 for any act taken by the pharmacist in reliance on a reasonable belief that an order purporting to be a prescription was issued by a practitioner in the usual course of professional treatment or in authorized research.

(5) No practitioner shall prescribe, orally, electronically or in writing, or take without a prescription a controlled substance included in schedule I, II, III or IV for the practitioner's own personal use.

History: 1971 c. 219; 1975 c. 190,421; 1977 c. 203; 1995 a. 448 ss. **235 to** 240, 483 to **485; Stats.** 1995 s. 961.38; 1997 a. 27.

961.39 Limitations on optometrists. An optometrist who is certified under s. 449.18:

(1) May not prescribe or administer a controlled substance included in schedule I or II.

(2) May prescribe or administer only those controlled substances included in schedules III, IV and V that are permitted for prescription or administration under the rules promulgated under s. 449.18 (8).

(3) Shall include with each prescription order all of the following:

(a) A statement that he or she is certified under s. 449.18.

(b) The indicated use of the controlled substance included in schedule III, IV or V so prescribed.

(4) May not dispense other than by prescribing or administering.

History: 1989 a. 31: 1995 a. 448 s. 241; Stats. 1995 s. 961.39.

961.395 Limitation on advanced practice nurses. (1) An advanced practice nurse who is certified under s. 441.16 may prescribe controlled substances only as permitted by the rules promulgated under s. 441.16 (3).

(2) An advanced practice nurse certified under s. 441.16 shall include with each prescription order the advanced practice nurse prescriber certification number issued to him or her by the board of nursing.

(3) An advanced practice nurse certified under s. 441.16 may dispense a controlled substance only by prescribing or administering the controlled substance or as otherwise permitted by the rules promulgated under s. 441.16 (3).

History: 1995 a. 448.

SUBCHAPTER IV

OFFENSES AND PENALTIES

961.41 Prohibited acts A—penalties. (1) MANUFACTURE, DISTRIBUTION OR DELIVERY. Except as authorized by this chapter, it is unlawful for any person to manufacture, distribute or deliver a controlled substance or controlled substance analog. Any person who violates this subsection is subject to the following penalties:

(a) *Schedule I and II narcotic drugs generally* Except as provided in par. (d), if a person violates this subsection with respect to a controlled substance included in schedule I or II which is a narcotic drug, or a controlled substance analog of a controlled substance included in schedule I or II which is a narcotic drug, the person is guilty of a Class E felony.

(b) *Schedule I, II, and III nonnarcotic drugs generally.* Except as provided in pars. (cm) and (e) to (hm), if a person violates this subsection with respect to any other controlled substance included in schedule I, II, or III, or a controlled substance analog of any other controlled substance included in schedule I or II, the person is guilty of a Class H felony.

(cm) *Cocaine and cocaine base.* If the person violates this subsection with respect to cocaine or cocaine base, or a controlled substance analog of cocaine or cocaine base, and the amount manufactured, distributed, or delivered is:

1g. One gram or less, the person is guilty of a Class G felony.

1r. More than one gram but not more than 5 grams, the person is guilty of a Class F felony.

2. More than 5 grams but not more than 15 grams, the person is guilty of a Class E felony.

3. More than 15 grams but not more than 40 grams, the person is guilty of a Class D felony.

4. More than 40 grams, the person is guilty of a Class C felony.

(d) *Heroin.* If the person violates this subsection with respect to heroin or a controlled substance analog of heroin and the amount manufactured, distributed or delivered is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than *50* grams, the person is guilty of a Class D felony.

4. More than 50 grams, the person is guilty of a Class C felony.

(e) *Phencyclidine, anzphetamine, methamphetamine, and methcathinone.* If the person violates this subsection with respect to phencyclidine, amphetamine, methamphetamine, or methcathinone, or a controlled substance analog of phencyclidine, amphetamine, methamphetamine, or metheathinone, and the amount manufactured, distributed, or delivered is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than *3* grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than *50* grams, the person is guilty of a Class D felony.

4. More than 50 grams, the person is guilty of a Class C felony.

(f) *Lysergic acid diethylamide.* If the person violates this subsection with respect to lysergic acid diethylamide or a controlled substance analog of lysergic acid diethylamide and the amount manufactured, distributed, or delivered is:

1. One gram or less, the person is guilty of a Class ***G*** felony.

2. More than one gram but not more than 5 grams, the person is guilty of a Class F felony.

3. More than 5 grams, the person is guilty of a Class E felony.

(g) *Psilocin and psilocybin.* If the person violates this subsection with respect to psiloein or psilocybin, or a controlled substance analog of psilocin or psilocybin, and the amount manufactured, distributed or delivered is:

1. One hundred grams or less, the person is guilty of a Class G felony.

2. More than 100 grams but not more than 500 grams, the person is guilty of a Class **F** felony.

3. More than *500* grams, the person is guilty of a Class E felony.

(h) *Tetrahydrocannabinols.* If the person violates this subsection with respect to tetrahydrocannabinols, included under s. 961.14 **(4)**(t), or a controlled substance analog of tetrahydrocannabinols, and the amount manufactured, distributed or delivered is:

1. Two hundred grams or less, or 4 or fewer plants containing tetrahydrocannabinols, the person is guilty of a Class I felony.

2. More than *200* grams but not more than 1,000 grams, or more than 4 plants containing tetrahydrocannabinols but not more than *20* plants containing tetrahydrocannabinols, the person is guilty of a Class H felony.

3. More than 1,000 grams but not more than *2,500* grams, or more than *20* plants containing tetrahydrocannabinols but not more than 50 plants containing tetrahydrocannabinols, the person is guilty of a Class G felony.

4. More than *2,500* grams but not more than 10,000 grams, or more than *50* plants containing tetrahydrocannabinols but not more than *200* plants Containing tetrahydrocannabinols, the person is guilty of a Class F felony.

5. More than 10,000 grams, or more than *200* plants containing tetrahydrocannabinols, the person is guilty of a Class E felony.

(hm) *Certain other schedule I controlled substances and ketamine.* If the person violates this subsection with respect to gamma–hydroxybutyric acid, gamma–butyrolactone, 3,4–methylenedioxymethamphetamine, 4–bromo–2,5–dimethoxy–beta– phenylethylamine, 4–methylthioamphetamine, ketamine, or a controlled substance analog of gamma–hydroxybutyric acid, gamma–butyrolactone, 3,4–methylenedioxymethamphetamine, 4–bromo–2,5–dimethoxy–beta–phenylethylamine, or 4–methylthioamphetamine and the amount manufactured, distributed, or delivered is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than *50 grams,* the person is guilty of a Class D felony.

4. More than 50 grams, the person is guilty of a Class C felony.

(i) *Schedule IV drugs generally* Except as provided in par. (im), if a person violates this subsection with respect to a substance included in schedule IV, the person is guilty of a Class H felony.

(im) *Flunitrazepam.* If a person violates this subsection with respect to flunitrazepam and the amount manufactured, distributed, or delivered is:

1. Three grams or less, the person is guilty of a Class **F** felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.

4. More than *50* grams, the person is guilty of a Class C felony.

(j) *Schedule V drugs.* If a person violates this subsection with respect to a substance included in schedule V, the person is guilty of a Class I felony.

(1m) POSSESSION WITH INTENT TO **MANUFACTURE,** DISTRIBUTE OR DELIVER. Except as authorized by this chapter, it is unlawful for any person to possess, with intent to manufacture, distribute or deliver, a controlled substance or a controlled substance analog. Intent under this subsection may be demonstrated by, without limitation because of enumeration, evidence of the quantity and monetary value of the substances possessed, the possession of manufacturing implements or paraphernalia, and the activities or statements of the person in possession of the controlled substance or a controlled substance analog prior to and after the alleged violation. Any person who violates this subsection is subject to the following penalties:

(a) *Schedule I and II narcotic drugs generally.* Except as provided in par. (d), if a person violates this subsection with respect to a controlled substance included in schedule I or II which is a narcotic drug or a controlled substance analog of a controlled substance included in schedule I or II which is a narcotic drug, the person is guilty of a Class E felony.

(b) *Schedule I, II, and 111 nonnarcotic drugs generally.* Except as provided in pars. (em) and (e) to (hm), if a person violates this subsection with respect to any other controlled substance included in schedule I, II, or III, or a controlled substance analog of any other controlled substance included in schedule 1 or II, the person is guilty of a Class H felony.

(em) *Cocaine and cocaine base.* If a person violates this subsection with respect to cocaine or cocaine base, or a controlled substance analog of cocaine or cocaine base, and the amount possessed, with intent to manufacture, distribute or deliver, is:

1g. One gram or less, the person is guilty of a Class G felony.

1r. More than one gram but not more than 5 grams, the person is guilty of a Class F felony.

2. More than 5 grams but not more than 15 grams, the person is guilty of a Class E felony.

3. More than 15 grams but not more than 40 grams, the person is guilty of a Class D felony.

4. More than 40 grams, the person is guilty of a Class C felony.

(d) *Heroin.* If a person violates this subsection with respect to heroin or a controlled substance analog of heroin and the amount possessed, with intent to manufacture, distribute or deliver, is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than *50* grams, the person is guilty of a Class D felony.

4. More than *50* grams, the person is guilty of a Class C felony.

(e) *Phencyclidine, amphetamine, methamphetamine, and methcathinone.* If a person violates this subsection with respect to phencyclidine, amphetamine, methamphetamine, or methca-

thinone, or a controlled substance analog of phencyclidine, amphetamine, methamphetamine, or methcathinone, and the amount possessed. with intent to manufacture, distribute, or deliver, is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.

4. More than 50 grams, the person is guilty of a Class C felony.

(f) *Lysergic acid diethylamide.* If a person violates this subsection with respect to lysergic acid diethylamide or a controlled substance analog of lysergic acid diethylamide and the amount possessed, with intent to manufacture, distribute or deliver, is:

1. One gram or less, the person is guilty of a Class G felony.

2. More than one gram but not more than 5 grams, the person is guilty of a Class F felony.

3. More than 5 grams, the person is guilty of a Class E felony.

(g) *Psilocin and psilocybin.* If a person violates this subsection with respect to psilocin or psilocybin, or a controlled substance analog of psilocin or psilocybin, and the amount possessed, with intent to manufacture, distribute or deliver, is:

1. One hundred grams or less, the person is guilty of a Class G felony.

2. More than 100 grams but not more than 500 grams, the person is guilty of a Class F felony.

3. More than 500 grams, the person is guilty of a Class E felony.

(h) *Tetrahydrocannabinols.* If a person violates this subsection with respect to tetrahydrocannabinols, included under s. 961.14 (4) (t), or a controlled substance analog of tetrahydrocannabinols, and the amount possessed, with intent to manufacture, distribute, or deliver. is:

1. Two hundred grams or less, or 4 or fewer plants containing tetrahydrocannabinols, the person is guilty of a Class I felony.

2. More than 200 grams but not more than 1,000 grams, or more than 4 plants containing tetrahydrocannabinols but not more than 20 plants containing tetrahydrocannabinols, the person is guilty of a Class H felony.

3. More than 1,000 grams but not more than 2,500 grams, or more than 20 plants containing tetrahydrocannabinols but not more than *50* plants containing tetrahydrocannabinols, the person is guilty of a Class G felony.

4. More than 2,500 grams but not more than 10,000 grams, or more than 50 plants containing tetrahydrocannabinols but not more than 200 plants containing tetrahydrocannabinols, the person is guilty of a Class F felony.

5. More than 10,000 grams, or more than 200 plants containing tetrahydrocannabinols, the person is guilty of a Class E felony.

(hm) *Certain other schedule I controlled substances and ketamine.* If the person violates this subsection with respect to gamma–hydroxybutyric acid, gamma–butyrolactone, 3,4–methylenedioxymethamphetamine 4–bromo–2,5–dimethoxy–beta–phenylethylamine, 4–methylthioamphetamine, ketamine, or a controlled substance analog of gamma–hydroxybutyric acid, gamma–butyrolactone, 3,4–methylenedioxymethamphetamine 4–bromo–2,5–dimethoxy–beta–phenylethylamine, or 4–methylthioamphetarnine is subject to the following penalties if the amount possessed, with intent to manufacture, distribute, or deliver is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.

4. More than 50 grams, the person is guilty of a Class C felony.

(i) *Schedule IV drugs generally.* Except as provided in par. (im), if a person violates this subsection with respect to a substance included in schedule IV, the person is guilty of a Class H felony.

(im) *Flunitrazepam.* If a person violates this subsection with respect to flunitrazepam and the amount possessed, with intent to manufacture, distribute, or deliver, is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than *50* grams, the person is guilty of a Class D felony.

4. More than 50 grams, the person is guilty of a Class C felony.

(j) *Schedule V drugs.* If a person violates this subsection with respect to a substance included in schedule V, the person is guilty of a Class I felony.

(1n) PIPERIDINE POSSESSION. (a) No person may possess any quantity of piperidine or its salts with the intent to use the piperidine or its salts to manufacture a controlled substance or controlled substance analog in violation of this chapter.

(b) No person may possess any quantity of piperidine or its salts if he or she knows or has reason to know that the piperidine or its salts will be used to manufacture a controlled substance or controlled substance analog in violation of this chapter.

(c) A person who violates par. (a) or (b) is guilty of a Class F felony.

(1q) PENALTY RELATING TO TETRAHYDROCANNABINOLS IN CERTAJN CASES. Under s. 961.49 (2), 1999 stats., and subs. (1) (h) and (Im) (h), if different penalty provisions apply to a person depending on whether the weight of tetrahydrocannabinols or the number of plants containing tetrahydrocannabinols is considered, the greater penalty provision applies.

(1r) DETERMINING WEIGHT OF SUBSTANCE. In determining amounts under s. 961.49 (2) (b), 1999 stats., and subs. (1) and (1m), an amount includes the weight of cocaine, cocaine base, heroin, phencyclidine, lysergic acid diethylamide, psilocin, psilocybin, amphetamine, methamphetamine, methcathinone or tetrahydrocannabinols or any controlled substance analog of any of these substances together with any compound, mixture, diluent, plant material or other substance mixed or combined with the controlled substance or controlled substance analog. In addition, in determining amounts under subs. (1) (h) and (1m) (h), the amount of tetrahydrocannabinols means anything included under s. 961.14 (4) (t) and includes the weight of any marijuana.

(1x) CONSPIRACY. Any person who conspires, as specified in s. 939.31, to commit a crime under sub. (1) (cm) to (b) or (1m) (cm) to (h) is subject to the applicable penalties under sub. (1) (cm) to (h) or (1m) (cm) to (h).

(2) COUNTERFEIT SUBSTANCES. Except as authorized by this chapter, it is unlawful for any person to create, manufacture, distribute, deliver or possess with intent to distribute or deliver, a counterfeit substance. Any person who violates this subsection is subject to the following penalties:

(a) *Counterfeit schedule I and II narcotic drugs.* If a person violates this subsection with respect to a counterfeit substance included in schedule I or II which is a narcotic drug, the person is guilty of a Class E felony.

(b) *Counterfeit schedule I, II, III, and IV drugs.* Except as provided in pars. (bm) and (cm), if a person violates this subsection with respect to any other counterfeit substance included in schedule I, II, III, or IV, the person is guilty of a Class H felony.

(bm) A counterfeit substance that is a counterfeit of phencyclidine, methamphetamine, lysergic acid diethylamide, gamma–hydroxybutyric acid, gamma–butyrolactone, 3,4–methylenedioxymethamphetamine 4–bromo–2,5–dimethoxy–beta–phenylethyl– amine, 4–methylthioamphetamine, or ketamine is punishable by the applicable fine and imprisonment for manufacture, distribution, delivery, or

possession with intent to manufacture, distribute, or deliver, of the genuine controlled substance under sub. (1) or (1m).

(cm) *Counterfeit flunitrazepam.* A counterfeit substance which is flunitrazepam, is punishable by the applicable fine and imprisonment for manufacture. distribution, delivery, or possession with intent to manufacture, distribute, or deliver, of the genuine controlled substance under sub. (1) or (Im).

(d) *Counterfeit schedule V drugs.* If a person violates this subsection with respect to a counterfeit substance included in schedule V, the person is guilty of a Class I felony.

(3g) POSSESSION. No person may possess or attempt to possess a controlled substance or a controlled substance analog unless the person obtains the substance or the analog directly from, or pursuant to a valid prescription or order of, a practitioner who is acting in the course of his or her professional practice, or unless the person is otherwise authorized by this chapter to possess the substance or the analog. Any person who violates this subsection is subject to the following penalties:

(am) *Schedule I and II narcotic drugs.* If a person possesses a controlled substance included in schedule I or II which is a narcotic drug, or possesses a controlled substance analog of a controlled substance included in schedule I or II which is a narcotic drug, the person is guilty of a Class I felony.

(b) *Other drugs generally.* Except as provided in pars. (c), (d), (e) and **(f),** if the person possesses or attempts to possess a controlled substance or controlled substance analog, other than a controlled substance included in schedule I or II that is a narcotic drug or a controlled substance analog of a controlled substance included in schedule I or II that is a narcotic drug, the person is guilty of a misdemeanor, punishable under s. 939.61.

(c) *Cocaine and cocaine base.* If a person possess or attempts to possess cocaine or cocaine base, or a controlled substance analog of cocaine or cocaine base, the person shall be fined not more than $5,000 and may be imprisoned for not more than one year in the county jail upon a first conviction and is guilty of a Class I felony for a 2nd or subsequent offense. For purposes of this paragraph, an offense **is** considered a 2nd or subsequent offense if, prior to the offender's conviction of the offense, the offender has at any time been convicted of any felony or misdemeanor under this chapter or under any statute of the United States or of any state relating to controlled substances, controlled substance analogs, narcotic drugs, marijuana, or depressant, stimulant, or hallucinogenic drugs.

(d) *Certain hallucinogenic and stimulant **drugs.*** If a person possesses or attempts to possess lysergic acid diethylamide, phencyclidine, amphetamine, methamphetamine, methcathinone, psilocin or psilocybin, or a controlled substance analog of lysergic acid diethylamide, phencyclidine, amphetamine, methamphetamine, methcathinone, psilocin or psilocybin, the person may be fined not more than $5,000 or imprisoned for not more than one year in the county jail or both upon a first conviction and is guilty of a Class I felony for a 2nd or subsequent offense. For purposes of this paragraph, an offense is considered a 2nd or subsequent offense if, prior to the offender's conviction of the offense, the offender has at any time been convicted of any felony or misdemeanor under this chapter or under any statute of the United States or of any state relating to controlled substances, controlled substance analogs, narcotic drugs, marijuana, or depressant, stimulant, or hallucinogenic drugs.

(e) *Tetrahydrocannabinols.* If a person possesses or attempts to possess tetrahydrocannabinols included under **s.** 961.14 (4) (t), or a controlled substance analog of tetrahydrocannabinols, the person may be fined not more than $1,000 or imprisoned for not more than 6 months or both upon a first conviction and is guilty of a Class I felony for a 2nd or subsequent offense. For purposes of this paragraph, an offense is considered a 2nd or subsequent offense if, prior to the offender's conviction of the offense, the offender has at any time been convicted of any felony or misdemeanor under this chapter or under any statute of the United States or of any state relating to controlled substances, controlled substance analogs, narcotic drugs, marijuana, or depressant, stimulant, or hallucinogenic drugs.

(f) *Gamma–hydroxybutyric acid, gamma–butyrolactone, ketamine, or flunitrazepam.* If a person possesses or attempts to possess gamma–hydroxybutyric acid, gamma–butyrolactone, ketamine or flunitrazepam, the person is guilty of a Class H felony.

(4) IMITATION CONTROLLED SUBSTANCES. (am) 1. No person may knowingly distribute or deliver, attempt to distribute or deliver or cause to be distributed or delivered a noncontrolled substance and expressly or impliedly represent any of the following to the recipient:

a. That the substance is a controlled substance.

b. That the substance is of a nature, appearance or effect that will allow the recipient to display, sell, distribute, deliver or use the noncontrolled substance as a controlled substance, if the representation is made under circumstances in which the person has reasonable cause to believe that the noncontrolled substance will be used or distributed for use as a controlled substance.

2. Proof of any of the following is prima facie evidence of a representation specified in subd. 1. a. or b.:

a. The physical appearance of the finished product containing the substance is substantially the same as that of a specific controlled substance.

b. The substance is unpackaged or is packaged in a manner normally used for the illegal delivery of a controlled substance.

c. The substance is not labeled in accordance with 21 USC 352 or 353.

d. The person distributing or delivering, attempting to distribute or deliver or causing distribution or delivery of the substance to be made states to the recipient that the substance may be resold at a price that substantially exceeds the value of the substance.

3. A person who violates this paragraph is guilty of a Class I felony.

(bm) It is unlawful for any person to agree, consent or offer to lawfully manufacture, deliver, distribute or dispense any controlled substance to any person, or to offer, arrange or negotiate to have any controlled substance unlawfully manufactured, delivered, distributed or dispensed, and then manufacture, deliver, distribute or dispense or offer, arrange or negotiate to have manufactured, delivered, distributed or dispensed to any such person a substance which is not a controlled substance. Any person who violates this paragraph may be fined not more than $500 or imprisoned for not more than 6 months or both.

(5) DRUG ABUSE PROGRAM IMPROVEMENT SURCHARGE. (a) When a court imposes a fine for a violation of this section, it shall also impose a drug abuse program improvement surcharge in an amount of 50% of the fine and penalty assessment imposed.

(b) The clerk of the court shall collect and transmit the amount to the county treasurer as provided in **s.** 59.40 (2) (m). The county treasurer shall then make payment to the state treasurer as provided in s. 59.25 (3) **(f) 2.**

(c) **All** moneys collected from drug surcharges shall be deposited by the state treasurer in and utilized in accordance with s. 20.435 (6) (gb).

History: 1971 c. 219,307; 1973 c. 12; 1981 c. 90, 314; 1985 a. 328; 1987 a. 339, 403; 1989 a. 31, 56, 121; 1991 **a 39;** 138; 1993 **a** 98,118,437,482; 1995 **a** 201; 1995 a. 448 **ss.** 243 to 266,487 to 490; Stats. 1995 **s.** 961.41; 1997 **a** 220.283: 1999 a. 21. 32, 48, 57; 2001 a. 16, 109.

An inference of intent could be drawn from possession of hashish with a street value of $2,000 to $4,000 and opium with a street value of $20,000 to $24,000. State v. Trimbell, 64 Wis. 2d 379,219 N.W.2d 369 (1974).

No presumption of intent to deliver is raised by sub. (Im). **The** statute merely lists evidence from which intent may be inferred. State ex rel. Bena **v.** Hon. John J. Crosetto, 73 Wis. 2d 261.243 N.W.2d 442 (1976).

Evidence of a defendant's possession of a pipe containing burnt residue of marijuana **was** insufficient to impute knowledge to the defendant of possession of a controlled substance. Kabat v. State. 76 **Wis.** 2d 224.251 N.W.2d 38 (1977).

This section prohibits the act of manufacture, as defined in 161.01 (13) [now 961.01 (13)]. Possession of a controlled substance created by an accused is not required for conviction. This section is not unconstitutionally vague. State ex rel. Bell v. Columbia County Ct. 82 Wis. 2d 401,263 N.W.2d 162 (1978).

A conviction under sub. (1) was proper when the defendant possessed 1/3 pr[illegible] 4 packages and evidence of defendant's prior sales of other drugs was admitted under s. 904.04 (2) as probative of intent to deliver the cocaine. Pr[illegible]y v. S[illegible] 83 Wis. 2d 224, 265 N.W.2d 506 (1978).

Testimony that weapons [illegible] at the accused's home was admissible as pa[illegible] of the chain of facts relevant to the accused's intent to deliver [illegible] in St[illegible] v. Wi[illegible]dg[illegible], 100 Wis. 2d 514, 302 N.W.2d 810 (1981).

Being a procuring agent of the buyer is not a valid defense to a charge under this sec[illegible]. By facilitating a drug deal, the defendant was party to the crime. State v. H[illegible]sel 116 Wis. 2d 605, 342 N.W.2d 721 (1984).

When police confiscated a large quantity of drugs from an empty home and the next day searched the defendant upon his return to the home, confiscating a small quantity of the same drugs, the defendant's conviction for the lesser-included offense of possession and the greater offense of possession with intent to deliver did not violate [illegible]bl[illegible] p[illegible] b[illegible]. State v. Stevens, 123 Wis. 2d 303, 367 N.W.2d 788 (1985).

The defendant was [illegible]y convicted of attempted delivery of cocaine even though a noncontrolled substance was delivered. State v. Cooper, 127 Wis. 2d 429, 380 N.W.2d 383 (Ct. App. 1985).

Possession is not a lesser included offense of manufacturing. Stat[illegible] v. F[illegible]h 143 Wis. 2d 624, 422 N.W.2d 169 (Ct. App. 1988).

Identification of a substance can be established by [illegible] evidence such as lay experience based on familiarity through prior use, trading, or law enforcement. State v. Anderson, 176 Wis. 2d 196, N.W.2d (Ct. App. 1993).

A conspiracy under sub. (1x) must involve at least 2 people with the subject to the same penalty for the conspiracy. If the buyer of drugs is guilty of misdemeanor possession only, a felony conspiracy charge may not be brought against the buyer. State v. Smith, 189 Wis. 2d 496, 525 N.W.2d 264 (1995).

The state is not required to prove that a defendant knew the exact nature or precise chemical name of a possessed controlled substance. The state must only prove that the defendant believed that the substance was a controlled [illegible]. State v. Sartin, 200 Wis. 2d [illegible], 546 N.W.2d 45 (1996).

A delivery conspiracy under sub. (1x) requires an agreement between a buyer and a seller that the buyer will deliver at least some of the controlled substance to a 3rd party. State v. Cavallari, 214 Wis. 2d 42, 571 N.W.2d 176 (Ct. App. 1997).

Standing alone, the presence of drugs in someone's system is insufficient to support a conviction for possession, but it is circumstantial evidence of prior possession. Evidence that the defendant was selling drugs [illegible] not to a charge of simple possession. Evidence that the defendant had money but no job does not [illegible] to prove possession. State v. Griffin, 220 Wis. 2d [illegible], 584 N.W.2d 112 (Ct. App. 1998).

Double jeopardy was not violated when the defendant was convicted of [illegible] offenses under s. 161.41 [now 961.41] for [illegible] controlled substance. Leonard v. Warden, Dodge Correctional Inst., 631 F. Supp. 1403 (1986).

961.42 Prohibited acts B—penalties. (1) It is unlawful for any person knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft or other structure or place, which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for manufacturing, keeping or delivering them in violation of this chapter.

(2) Any person who violates this section is guilty of a Class I felony.

History: 1971 c. **219; 1995** a. **448 s. 267;** Stats. **1995 s. 961.42; 1997 a. 283; 2001** a. 109.

"Keeping" a *substance* under sub. (1) means more than simple possession; it means **keeping** for the purpose of warehousing or storage for ultimate manufacture or delivery. State v. **Brooks, 124 Wis. 2d 349, 369** N.W.2d **183** (Ct. App. **1985).**

961.43 Prohibited acts C—penalties. (1) It is unlawful for any person:

(a) To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;

(b) Without authorization, to make, distribute or possess any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as:

1. To make a counterfeit substance; or

2. To duplicate substantially the physical appearance, form, package or label of a controlled substance.

(2) Any person who violates this section is guilty of a Class **H** felony.

History: 1971 c. **219;** 1981 c. **90; 199.5** a. **448 s. 268;** Stats. **1995 s. 961.43; 1997** a. **283; 2001** a. **109.**

961.435 Specific penalty. Any person who violates s. 961.38 *(5)* may be fined not more than $500 or imprisoned not more than 30 days or both.

History: 1975 c. **190; 199.5 a. 448 s. 269;** Stats. **1995 s. 961.435.**

961.437 Possession and disposal of waste from manufacture of methamphetamine. (1) In this section:

(a) "Dispose of" means discharge, deposit, inject, dump, spill, leak or place methamphetamine manufacturing waste into or on any land *or* water in a manner that may permit the waste to bc emitted into the air, to be discharged into any waters of the state or otherwise to enter the environment.

(b) ''Intentionally'' has the meaning given in s. 939.23 (3).

(c) "Methamphetamine manufacturing waste" means any solid, semisolid, liquid or contained gaseous material or article that results from or is produced by the manufacture of methamphetamine or a controlled substance analog of methamphetamine in violation of this chapter.

(2) No person may do any of the following:

(a) Knowingly possess methamphetamine manufacturing waste.

(b) Intentionally dispose of methamphetamine manufacturing waste.

(3) Subsection (2) does not apply to a person who possesses or disposes of methamphetamine manufacturing waste under all of the following circumstances:

(a) The person is storing, treating or disposing of the methamphetamine manufacturing waste in compliance with chs. 287, 289, 291 and 292 or the person has notified a law enforcement agency of the existence of the methamphetamine manufacturing waste.

(b) The methamphetamine manufacturing waste had previously been possessed or disposed of by another person in violation of sub. (2).

(4) A person who violates sub. (2) is subject to the following penalties:

(a) For a first offense, the person is guilty of a Class **H** felony.

(b) For a 2nd or subsequent offense, the person is guilty of a Class F felony.

(5) Each day of a continuing violation of sub. (2) (a) or (b) constitutes a separate offense.

History: 1999 a. 129; 2001 a. **109,**

961.44 Penalties under other laws. Any penalty imposed for violation of this chapter is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

History: 1971 c. **219; 1995** a. **448 s. 271;** Stats. **1995 s. 961.44.**

961.45 Bar to prosecution. If a violation of this chapter is **a** violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.

History: 1971 c. **219; 1995** a. **448 s. 272;** Stats. **1995 s. 961.45.**

Under this section, a "prosecution" is to he equated with a conviction or acquittal. The date on which a sentence is imposed is not relevant to the determination of whether a ''prosecution" has occurred. State v. Petty, 201 **Wis. 2d 337.548** N.W.2d **817 (1996).**

This section bars a Wisconsin prosecution under ch. **961** for the same conduct on which a prior federal conviction is based. The restriction is not limited to the same crime as defined by its statutory elements. State v. Hansen, 2001 **WI 53,243** Wis. **328, 627** NW. **2d 195.**

961.455 Using a child for illegal drug distribution or manufacturing purposes. (1) Any person who has attained the age of 17 years who knowingly solicits, hires, directs, employs or uses a person who is under the age of 17 years for the purpose of violating s. 961.41 (1) is guilty of a Class **F** felony.

(2) The knowledge requirement under sub. (1) does not require proof of knowledge of the age of the child. It is not a defense to a prosecution under this section that the actor mistakenly believed that the person solicited, hired, directed, employed or used under sub. (1) had attained the age of 18 years, even if the mistaken belief was reasonable.

(3) Solicitation under sub. (1) occurs in the manner described under s. 939.30, but the penalties under sub. (1) apply instead of the penalties under s. 939.30.

(4) If the conduct described under sub. (1) results in a violation under s. 961.41 (1), the actor is subject to prosecution and conviction under s. 961.41 (1) or this section or both.

History: 1989 a. 121; 1991 a. 153; 1995 a. 27; 1995 a. 448 ss. 273 to 275; Stats. 1995 s. 961.455; 1997 a. 283; 2001 a. 109.

961.46 Distribution to persons under age 18. If a person 17 years of age or over violates s. 961.41 (1) by distributing or delivering a controlled substance or a controlled substance analog to a person 17 years of age or under who is at least 3 years his or her junior, the applicable maximum term of imprisonment prescribed under s. 961.41 (1) for the offense may be increased by not more than 5 years.

History: 1971 c. 219; 1985 a. 328; 1987 a. 339; 1989 a. 121; 1993 a. 98, 118, 490; 1995 a. 27; 1995 a. 448 ss. 276 to 279; Stats. 1995 s. 961.46; 1999 a. 48, 57; 2001 a. 109.

961.47 Conditional discharge for possession or attempted possession as first offense. **(1)** Whenever any person who has not previously been convicted of any offense under this chapter, or of any offense under any statute of the United States or of any state or of any county ordinance relating to controlled substances or controlled substance analogs, narcotic drugs, marijuana or stimulant, depressant or hallucinogenic drugs, pleads guilty to or is found guilty of possession or attempted possession of a controlled substance or controlled substance analog under s. 961.41 (3g) (b), the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him or her on probation upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him or her. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for 2nd or subsequent convictions under s. 961.48. There may be only one discharge and dismissal under this section with respect to any person.

(2) Within 20 days after probation is granted under this section, the clerk of court shall notify the department of justice of the name of the individual granted probation and any other information required by the department. This report shall be upon forms provided by the department.

History: 1971 c. 219; 1985 a. 29; 1989 a. 121; 1991 a. 39; 1995 a. 448 s. 285; Stats. 1995 s. 961.47.

A disposition of probation without entering a judgment of guilt, was not appealable because there was no judgment. If a defendant desires either a final judgment or order in the nature of a final judgment for appeal purposes, he or she has only to withhold consent. State v. Ryback, 64 Wis. 2d 574, 219 N.W.2d 263 (1974).

The reference to s. 161.41 (3) [now 961.41 (3g) (b)] in sub. (1) means that proceedings may only be deferred for convictions for crimes encompassed by s. 161.41 (3) [now 961.41 (3g) (b)]. State v. Boyer, 198 Wis. 2d 837, 543 N.W.2d 562 (Ct. App. 1995).

961.472 Assessment; certain possession or attempted possession offenses. **(1)** In this section, "facility" means an approved public treatment facility, as defined under s. 51.45 (2) (c).

(2) Except as provided in sub. (5), if a person pleads guilty or is found guilty of possession or attempted possession of a controlled substance or controlled substance analog under s. 961.41 (3g) (am), (c), or (d), the court shall order the parson to comply with an assessment of the person's use of controlled substances. The court's order shall designate a facility that is operated by or pursuant to a contract with the county department established under s. 51.42 and that is certified by the department of health and family services to provide assessment services to perform the assessment and, if appropriate, to develop a proposed treatment plan. The court shall notify the person that noncompliance with the order limits the court's ability to determine whether the treatment option under s. 961.475 is appropriate. The court shall also notify the person of the fee provisions under s. 46.03 (18) (fm).

(3) The facility shall submit an assessment report within 14 days to the court. At the request of the facility, the court may extend the time period by not more than 20 additional workdays. The assessment report may include a proposed treatment plan.

(4) The court shall consider the assessment report in determining whether the treatment option under s. 961.475 is appropriate.

(5) If the court finds that a person under sub. (2) is already covered by or has recently completed an assessment under this section or a substantially similar assessment, the court is not required to make the order under sub. (2).

History: 1985 a. 328; 1957 a. 339; 1989 a. 121; 1993 a. 118; 1995 a. 27 s. 9126 (19); 1995 a. 448 s. 286; Stats. 1995 s. 961.472; 1999 a. 48; 2001 a. 109.

961.475 Treatment option. Whenever any person pleads guilty to or is found guilty of possession or attempted possession of a controlled substance or controlled substance analog under s. 961.41 (3g), the court may, upon request of the person and with the consent of a treatment facility with special inpatient or outpatient programs for the treatment of drug dependent persons, allow the person to enter the treatment programs voluntarily for purposes of treatment and rehabilitation. Treatment shall be for the period the treatment facility feels is necessary and required, but shall not exceed the maximum sentence allowable unless the person consents to the continued treatment. At the end of the necessary and required treatment, with the consent of the court, the person may be released from sentence. If treatment efforts are ineffective or the person ceases to cooperate with treatment rehabilitation efforts, the person may be remanded to the court for completion of sentencing.

History: 1971 c. 219,336; 1985 a. 328; 1987 a. 339; 1989 a. 121; 1993 a. 118, 1995 a. 448 s. 287; Stats. 1995 s. 961.475.

961.48 Second or subsequent offenses. **(1)** If a person is charged under sub. (2m) with a felony offense under this chapter that is a 2nd or subsequent offense as provided under sub. (3) and the person is convicted of that 2nd or subsequent offense, the maximum term of imprisonment for the offense may be increased as follows:

(a) By not more than 6 years, if the offense is a Class C or D felony.

(b) By not more than 4 years, if the offense is a Class E, F, G, H, or I felony.

(2m) (a) Whenever a person charged with a felony offense under this chapter may be subject to a conviction for a 2nd or subsequent offense, he or she is not subject to an enhanced penalty under sub. (1) unless any applicable prior convictions are alleged in the complaint, indictment or information or in an amended complaint, indictment or information that is filed under par. (b) 1. A person is not subject to an enhanced penalty under sub. (1) for an offense if an allegation of applicable prior convictions is withdrawn by an amended complaint filed under par. (b) 2.

(b) Notwithstanding s. 971.29 (1), at any time before entry of a guilty or no contest plea or the commencement of a trial, a district attorney may file without leave of the court an amended complaint, information or indictment that does any of the following:

1. Charges an offense as a 2nd or subsequent offense under this chapter by alleging any applicable prior convictions.

2. Withdraws the charging of an offense as a 2nd or subsequent offense under this chapter by withdrawing an allegation of applicable prior convictions.

(3) For purposes of this section, a felony offense under this chapter is considered a 2nd or subsequent offense if, prior to the offender's conviction of the offense, the offender has at any time been convicted of any felony or misdemeanor offense under this chapter or under any statute of the United States or of any state relating to controlled substances or controlled substance analogs,

narcotic drugs, marijuana or depressant, stimulant or hallucinogenic drugs.

History: 1971 c. 219; 1985 a. 328; 1987 a. 339; 1989 a. 121; 1993 a. 98, 118, 482, 490; 1995 a. 402; 1995 a. 448 s. 288; Stats. 1995 s. 961.48; 1997 a. 35 ss. 340, 584: 1997 a. 220; 1999 a. 48; 2001 a. 109.

The trial court erred in imposing a 2nd sentence on a defendant convicted of a 2nd violation of 161.41 (1) (a) and 161.14 (3) (k) [now 961.41 (1) (a) and 961.14 (3) (k)]. While the repeater statute, 161.48 [now 961.48], allows imposition of a penalty not exceeding twice that allowable for a 1st offense, it does not of itself create a crime and cannot support a separate and independent sentence. Olson v. State, 69 Wis. 2d 605.230 N.W.2d 634.

For offenses under ch. 161 [now 961], the court may apply this section or s. 939.62. but not both. State v. Ray, 166 Wis. 2d 855,481 N.W.2d 288 (Ct. App. 1992).

In sentencing a defendant when the maximum sentence is doubled under this section, the court considers the same factors it considers in all sentencing, including prior convictions. State v. Canadeo, 168 Wis. 2d 559,484 N.W.2d 340 (Ct. App. 1992).

Sentencing under this section was improper when the defendant did not admit a prior conviction and the state did not offer proof of one. State v. Coolidge, 173 Wis. 2d 783,496 N.W.2d 701 (Ct. App. 1993).

Sub. (4) sets forth a limitation on the 2nd or subsequent offense; the previous offense may be any conviction under ch. 161 [now 961]. State v. Robertson, 174 Wis. 2d 36,496 N.W.2d 221 (Ct. App. 1993).

This section is self-executing; a prosecutor may not prevent the imposition of the sentences under this section by not charging the defendant as a repeater. State v. Young, 180 Wis. 2d 700, 511 N.W.2d 309 (Ct. App. 1993).

Conviction under this section for a second or subsequent offense does not require proof of the prior offense at trial beyond a reasonable doubt. State v. Miles, 221 Wis. 2d 56,584 N.W.2d 704 (Ct. App. 1998).

A conviction for possessing drug paraphernalia under s. 961.573 qualifies as a prior offense under sub. (3). State v. Moline. 229 Wis. 2d 38, 598 N.W.2d 929 (Ct. App. 1999).

961.49 Distribution of or possession with intent to deliver a controlled substance on or near certain places. If any person violates s. 961.41 (1j (cm), (dj, (e), *(f),* (g) or (h) by delivering or distributing, or violates s. 961.41 (1m) (cm), (d), (e), (f), (g) or (h) by possessing with intent to deliver or distribute, cocaine, cocaine base, heroin, phencyclidine, lysergic acid diethylamide, psilocin, psilocybin, amphetamine, methamphetamine, methcathinone or any form of tetrahydrocannabinols or a controlled substance analog of any of these substances and the delivery, distribution or possession takes place under any of the following circumstances, the maximum term of imprisonment prescribed by law for that crime may be increased by 5 years:

(1) While the person is in or on the premises of a scattered–site public housing project.

(2) While the person is in or on or otherwise within 1,000 feet of any of the following:

(a) A state, county, city, village or town park.

(bj A jail or correctional facility.

(cj A multiunit public housing project.

(dj A swimming pool open to members of the public.

(e) A youth center or a community center.

(f) Any private or public school premises.

(g) A school bus, as defined in s. 340.01 (56).

(3) While the person is in or on the premises of an approved treatment facility, as defined in s. 51.01 (2), that provides alcohol and other drug abuse treatment.

(4) While the person is within 1,000 feet of the premises of an approved treatment facility, as defined in s. 51.01 (2), that provides alcohol and other drug abuse treatment, if the person knows or should have known that he or she is within 1,000 feet of the premises of the facility or if the facility is readily recognizable as a facility that provides alcohol and other drug abuse treatment.

History: 1985 a. 328; 1987 a. 332, 339, 403; 1989 a. 31, 107, 121; 1991 a. 39 1993 a. 87, 98, 118, 281, 490, 491; 1995 a. 448 s. 289,491: Stats. 1995 s. 961.49; 1997 a 283,327; 1999 a. 32, 48, 57; 2001 a. 109.

Scienter is not an element of this section. State v. Hermann, 164 Wis. 2d 269,474 N.W.2d 906 (Ct. App. 1991).

A university campus is not a "school" within the meaning of s. 161.49 [now 961.49]. State v. Andrews, 171 Wis. 2d 217,491 N.W.2d 504 (Ct. App. 1992).

Anyone who passes within a zone listed in sub. (1) while in possession of a controlled substance with an intent to deliver it somewhere is subject to the penalty enhancer provided by this section whether or not the arrest is made within the zone and whether or not there is an intent to deliver the controlled substance within the zone. State v. Rasmussen. 195 Wis. 2d 109,536 N.W.2d 106 (Ct. App. 1995).

School "premises" begin at the school property line. State v. Hall, 196 Wis. 2d 850, 540 N.W.2d 219 (Ct. App. 1995).

The penalty enhancer for sales close to parks does not violate due process and is not unconstitutionally vague. The ordinary meaning of "parks" includes undeveloped parks. Proximity to a park is rationally related to protecting public health and safety from drug saleactivities. State v. Lopez, 207 Wis. 2d 415,559 N.W.2d 264 (Ct. App. 1996).

Day care centers are a subset of "youth centers" as defined in s. 961.01(22) and come within the definition of places listed in s. 961.49 (2). State v. Van Riper. 222 Wis. 2d 197, 586 N.W.2d 198 (Ct. App. 1998).

This section contains two elemental facts—a distance requirement and a particularized protected place—both of which must be submitted to the jury and proven beyond a reasonable doubt. State v. Harvey, 2002 WI 93, 254 Wis. 2d 442, 647 N.W.2d 189.

961.495 Possession or attempted possession of a controlled substance on or near certain places. If any person violates s. 961.41 (3g) by possessing or attempting to possess a controlled substance included in schedule I or II, a controlled substance analog of a controlled substance included in schedule I or II or ketamine or flunitrazepam while in or on the premises of a scattered–site public housing project, while in or on or otherwise within 1,000 feet of a state, county, city, village or town park, a jail or correctional facility, a multiunit public housing project, a swimming pool open to members of the public, a youth center or a community center, while in or on or otherwise within 1,000 feet of any private or public school premises or while in or on or otherwise within 1,000 feet of a school bus, as defined in s. 340.01 (56), the court shall, in addition to any other penalties that may apply to the crime, impose 100 hours of community service work for a public agency or a nonprofit charitable organization. The court shall ensure that the defendant is provided a written statement of the terms of the community service order and that the community service order is monitored. Any organization or agency acting in good faith to which a defendant is assigned pursuant to an order under this section has immunity from any civil liability in excess of $25,000 for acts or omissions by or impacting on the defendant.

History: 1989 a. 31, 121; 1991 a. 39; 1993 a. 87, 118, 281, 490; 1995 a. 448 s. 290; Stats. 1995 s. 961.495; 1999 a. 57.

961.50 Suspension or revocation of operating privilege. (1) If a person is convicted of any violation of this chapter, the court shall, in addition to any other penalties that may apply to the crime, suspend the person's operating privilege, as defined in s. 340.01 (40), for not less than 6 months nor more than 5 years. The court shall immediately take possession of any suspended license and forward it to the department of transportation together with the record of conviction and notice of the suspension. The person is eligible for an occupational license under s. 343.10 as follows:

(a) For the first such conviction, at any time.

(b) For a 2nd conviction within a 5–year period, after the first 60 days of the suspension or revocation period.

(c) For a 3rd or subsequent conviction within a 5–year period, after the first 90 days of the suspension or revocation period.

(2) For purposes of counting the number of convictions under sub. (1), convictions under the law of a federally recognized American Indian tribe or band in this state, federal law or the law of another jurisdiction, as defined in s. 343.32 (1m) (a), for any offense therein which, if the person had committed the offense in this state and been convicted of the offense under the laws of this state, would have required suspension or revocation of such person's operating privilege under this section, shall be counted and given the effect specified under sub. (1). The 5–year period under this section shall be measured from the dates of the violations which resulted in the convictions.

(3) If the person's license or operating privilege is currently suspended or revoked or the person does not currently possess a valid operator's license issued under ch. 343, the suspension or revocation under this section is effective on the date on which the person is first eligible and applies for issuance, renewal or reinstatement of an operator's license under ch. 343.

History: 1991 a 39; 1993 a. 16,480, 1995 a 448 s. 291; Stats. 1995 s. 961 *50;* 1997 a 84.

A suspension imposed pursuant to this section is not a "presumptive minimum sentence" under s. 961.438. A minimum 6–month suspension is mandatory. State v. Herman, 2002 WI App 28.250 Wis. 2d 166,640 N.W.2d 539.

SUBCHAPTER V

ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

961.51 Powers of enforcement personnel. (1) Any officer or employee of the pharmacy examining board designated by the examining board may:

(a) Execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas and summonses issued under the authority of this state;

(b) Make arrests without warrant for any offense under this chapter committed in the officer's or employee's presence, or if the officer or employee has reasonable grounds to believe that the person to be arrested has committed or is committing a violation of this chapter which may constitute a felony; and

(c) Make seizures of property pursuant to this chapter.

(2) This section does not affect the responsibility of law enforcement officers and agencies to enforce this chapter, nor the authority granted the department of justice under s. 165.70.

History: 1971 c. 219; 1985 a. 29; 1993 a. 482; 1995 a. 448 s. 293; Stats. 1995 s. 961.51.

961.52 Administrative inspections and warrants. (1) Issuance and execution of administrative inspection warrants shall be as follows:

(a) A judge of a court of record, upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this chapter or rules hereunder, and seizures of property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this chapter or rules hereunder, sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant.

(b) A warrant shall issue only upon an affidavit of a designated officer or employee of the pharmacy examining board or the department of justice having knowledge of the facts alleged, sworn to before the judge and establishing the grounds for issuing the warrant. If the judge is satisfied that grounds for the application exist or that there is probable cause to believe they exist, the judge shall issue a warrant identifying the area, premises, building or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:

1. State the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;

2. Be directed to a person authorized by law to execute it;

3. Command the person to whom it is directed to inspect the area, premises, building or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;

4. Identify the item or types of property to be seized, if any;

5. Direct that it be served during normal business hours and designate the judge to whom it shall be returned.

(c) A warrant issued pursuant to this section must be executed and returned within 10 days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(d) The judge who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the clerk of court for the county in which the inspection was made.

(2) The pharmacy examining board and the department of justice may make administrative inspections of controlled premises in accordance with the following provisions:

(a) For purposes of this section only, "controlled premises" means:

1. Places where persons authorized under s. 961.32 to possess controlled substances in this state are required by federal law to keep records; and

2. Places including factories, warehouses, establishments and conveyances in which persons authorized under s. 961.32 to possess controlled substances in this state are permitted by federal law to hold, manufacture, compound, process, sell, deliver or otherwise dispose of any controlled substance.

(b) When authorized by an administrative inspection warrant issued pursuant to sub. (1), an officer or employee designated by the pharmacy examining board or the department of justice, upon presenting the warrant and appropriate credentials to the owner, operator or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.

(c) When authorized by an administrative inspection warrant, an officer or employee designated by the pharmacy examining board or the department of justice may:

1. Inspect and copy records relating to controlled substances;

2. Inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in par. (e), all other things therein, including records, files, papers, processes, controls and facilities bearing on violation of this chapter; and

3. Inventory any stock of any controlled substance therein and obtain samples thereof.

(d) This section does not prevent entries and administrative inspections, including seizures of property, without a warrant:

1. If the owner, operator or agent in charge of the controlled premises consents;

2. In situations presenting imminent danger to health or safety;

3. In situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

4. In any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or

5. In all other situations in which a warrant is not constitutionally required.

(e) An inspection authorized by this section shall not extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator or agent in charge of the controlled premises consents in writing.

History: 1971 c. 219; 1983 a. 538; 1985 a. 29; 1993 a. 482; 1995 a. 448 s. 294; Stats. 1995 s. 961.52.

961.53 Violations constituting public nuisance. Violations of this chapter constitute public nuisances under ch. 823, irrespective of any criminal prosecutions which may be or are commenced based on the same acts.

History: 1971 c. 219; Sup. Ct. Order. 67 Wis. 2d 585.775 (1975); 1995 a. 448 s. 295; Stats. 1995 s. 961.53.

961.54 Cooperative arrangements and confidentiality. The department of justice shall cooperate with federal, state and local agencies in discharging its responsibilities concerning traffic

in controlled substances and in suppressing the abuse of controlled substances. To this end, it may:

(1) Arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances;

(2) Coordinate and cooperate in training programs concerning controlled substance law enforcement at local and state levels;

(3) Coopcrate with the bureau by establishing a centralized unit to accept, catalog, file and collect statistics, including records of drug dependent persons and other controlled substance law offenders within the state, and make the information available for federal, state and local law enforcement purposes. It shall not furnish the name or identity of a patient or research subject whose identity could not be obtained under s. 961.335 *(7);* and

(4) Conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

History: 1971 c. 219, 336; 1975 c. 110; 1995 a. 448 s. 296; Stats. 1995 s. Y61.54.

961.55 Forfeitures. (1) The following are subject to forfeihire:

(a) All controlled substances or controlled substance analogs which have been manufactured, delivered, distributed, dispensed or acquired in violation of this chapter.

(b) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, distributing, importing or exporting any controlled substance or controlled substance analog in violation of this chapter.

(c) All property which is used, or intended for use, as a container for property described in pars. (a) and (b).

(d) All vehicles which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in pars. (a) and (b) or for the purpose of transporting any property or weapon used or to be used or received in the commission of any felony under this chapter, but:

1. No vehicle used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the vehicle is a consenting party or privy to a violation of this chapter;

2. No vehicle is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent. This subdivision does not apply to any vehicle owned by a person who is under 16 years of age on the date that the vehicle is used, or is intended for use, in the manner described under par. (d) (intro.), unless the court determines that the owner is an innocent bona fide owner;

3. A vehicle is not subject to forfeiture for a violation of s. 961.41 (3g) (b), (c), (d), (e) or (f); and

4. If forfeiture of a vehicle encumbered by a bona fide perfected security interest occurs, the holder of the security interest shall be paid from the proceeds of the forfeiture if the security interest was perfected prior to the date of the commission of the felony which forms the basis for the forfeiture and he or she neither had knowledge of nor consented to the act or omission.

(e) All books, records, and research products and materials, including formulas, microfilm, tapes and data, which are used, or intended for use, in violation of this chapter.

(f) **All** property, real or personal, including money, directly or indirectly derived from or realized through the commission of any crime under this chapter.

(g) Any drug paraphernalia, as defined in s. 961.571, used in violation of this chapter.

(2) Property subject to forfeiture under this chapter may be seized by any officer or employee designated in s. 961.51 (1) or **(2)** or a law enforcement officer upon process issued by any court of record having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(c) The officer or employee or a law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) The officer or employee or a law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter, that the property was derived from or realized through a crime under this chapter or that the property is a vehicle which was used as described in sub. (1) (d).

(3) In the event of seizure under sub. (2), proceedings under sub. (4) shall be instituted promptly. All dispositions and forfeitures under this section and ss. 961.555 and 961.56 shall be made with due provision for the rights of innocent persons under sub, (1) (d) 1., 2. and 4. Any property seized but not forfeited shall be returned to its rightful owner. Any person claiming the right to possession of property seized may apply for its return to the circuit court for the county in which the property was seized. The court shall order such notice as it deems adequate to be given the district attorney and all persons who have or may have an interest in the property and shall hold a hearing to hear all claims to its true ownership. If the right to possession is proved to the court's satisfaction, it shall order the property returned if:

(a) The property is not needed as evidence or, if needed, satisfactory arrangements can be made for its return for subsequent use as evidence; or

(b) All proceedings in which it might be required have been completed.

(4) Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the sheriff of the county in which the seizure was made subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When property is seized under this chapter, the person seizing the property may:

(a) Place the property under seal;

(b) Remove the property to a place designated by it; or

(c) Require the sheriff of the county in which the seizure was made to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(5) When property is forfeited under this chapter, the agency whose officer or employee seized the property may:

(a) Retain it for official use;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public. The agency may use 50% of the amount received for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs and the costs of investigation and prosecution reasonably incurred. The remainder shall be deposited in the school fund as proceeds of the forfeiture. If the property forfeited is money, all the money shall be deposited in the school fund;

(c) Require the sheriff of the county in which the property was seized to take custody of the property and remove it for disposition in accordance with law; or

(d) Forward it to the bureau for disposition.

(6) Controlled substances included in schedule I and controlled substance analogs of controlled substances included in schedule I that are possessed, transferred, sold, offered for sale or attempted to be possessed in violation of this chapter are contraband and shall be seized and summarily forfeited to the state. Con-

trolled substances included in sclicdulc I and controlled substance analogs of controlled substances included in schedule I that are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

(6m) Flunitrazcpam or kctamine that is possessed, transferred, sold, offered for sale or attempted to be possessed in violation of this chapter is contraband and shall be seized and summarily forfeited to the state. Flunitrazepam or ketamine that is seized or comes into the possession of the state, the owner of which is unknown, is contraband and shall be summarily forfeited to the state.

(7) Species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the state.

(8) The failure, upon demand by any officer or employee designated in s. 961.51 (1) or (2), of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate federal registration, or proof that the person is the holder thereof, constitutes authoritv for the seizure and forfeiture of the plants.

History: 1971 c. 219,307; 1981 c. 267; 1985 a. 245.328; 1987 a. 339; 1989 a. 121: 1993 a. 118.482; 1995 a. 448 ss. 297 to 305; Stats. 1995 s. 961.55; 1997 a. 220; 1999 a. 48, 57, 110; 2001 a. 109.

A vehicle obtained out of state and used to transport a controlled substance is subject to forfeiture under sub. (1) (d). State v. S & S Meats, Inc. 92 Wis. 2d 64,284 N.W.2d 712 (Ct. App. 1979).

A vehicle subject *to* sub. (1) (d) 4 **is** not subject to forfeiture unless the **secured** party consents. State v. Fouse, 120 Wis. 2d 471,355 N.W.2d 366 (Ct. App. 1984).

Under sub. (1) (f), the state may seize property from an owner not charged with **a** crime. State v. Hooper, 122 Wis. 2d 748, 364 N.W.2d 175 (Ct. App. 1985).

The "seized but not forfeited" language of s. 961.55 (3) means that the portion **of** that subsection related to return of property is only triggered by an unsuccessful forfeiture action brought by the state; in the event that the district attorney elects not to bring **a** forfeiture action, a person seeking the return of seized properly may do **so** under s. 968.20. Jones v. State, 226 Wis. 2d 565, 594 N.W.2d 738 (1999).

961.555 Forfeiture proceedings. (1) TYPE OF ACTION; WHERE BROUGHT. In an action brought to cause the forfeiture of any property seized under s. 961.55, the court may render a judgment in rem or against a party personally. or both. The circuit court for the county in which the property was seized shall have jurisdiction over any proceedings regarding the property when the action is commenced in state court. Any property seized may be the subject of a federal forfeiture action.

(2) COMMENCEMENT. (a) The district attorney of the county within which the property was seized shall commence the forfeiture action within 30 days after the seizure of the property, except that the defendant may request that the forfeiture proceedings be adjourned until after adjudication of any charge concerning a crime which was the basis for the seizure of the property. The request shall be granted. The forfeiture action shall be commenced by filing a summons, complaint and affidavit of the person who seized the property with the clerk of circuit court, provided service of authenticated copies of those papers is made in accordance with ch. 801 within 90 days after filing upon the person from whom the property was seized and upon any person known to have a bona fide perfected security interest in the property.

(b) Upon service of an answer, the action shall be set for hearing within 60 days of the service of the answer but may be continued for cause or upon stipulation of the parties.

(c) In counties having a population of 500,000 or more, the district attorney or corporation counsel may proceed under par. (a).

(d) If no answer is served or no issue of law or fact has been joined and the time for that service or joining issue has expired, or if any defendant fails to appear at trial after answering or joining issue, the court may render a default judgment as provided in s. 806.02.

(3) BURDEN OF PROOF. The state shall have the burden of satisfying or convincing to a reasonable certainty by the greater weight of the credible evidence that the propcrty is subject to forfeiture under s. 961.55.

(4) ACTION AGAINST OTHER PROPERTY OF THE PERSON. The court may order the forfeiture of any other property of a defendant up to the value of property found by the court to be subject to forfeiture under s. 961.55 if the property subject to forfeiture meets any of the following conditions:

(a) Cannot be located.

(b) Has been transferred or conveyed to, sold to or deposited with a 3rd party.

(c) Is beyond the jurisdiction of the court.

(d) Has been substantially diminished in value while not in the actual physical custody of the law enforcement agency.

(e) Has been commingled with other property that cannot be divided without difficulty.

History: 1971 c. 219; **Sup.** Ct. Order, 67 Wis. 2d 585, 752 (1975); 1981 c. **113,** 267; Sup. Ct. Order, 120 Wis. 2d xiii; 1985 a. 245; 1989 a. 121; 1993 a. 321; 1995 a. 448 **s.** 306; Stats. 1995 **s.** 961.555; 1997 a. 187.

Judicial Council Committee Note, 1974: The district attorney would be required to file within the 15 [now 30] day period. The answer need not be verified. [Re Order effective Jan. 1, 1976]

Judicial Council Note, 1984: Sub. (2) (a) has been amended by allowing 60 days after the action is commenced for service **of** the summons. complaint and affidavit on the defendants. The prior statute. requiring service within 36 days after seizure of the properly, was an exception to the general nile of **s.** 801.02 (2), stats. [Re Order effective Jan. **1,** 1985]

The time provisions of sub. (2) are mandatory and jurisdictional. State v. Rosen, 72 Wis. 2d 200,240 N.W.2d 168 (1976).

Persons served under sub. (2) (a) must be named **as** defendants. An action cannot be brought against an inanimate object **as** a sole "defendant." State v. One 1973 Cadillac, 95 Wis. 2d 641, 291 N.W.2d 626 (Ct. App. 1980).

An affidavit under sub. (2) (a) must he executed by a person who was present at the seizure or who ordered the seizure and received reports from those present at the seizure. State v. Hooper, 122 Wis. 2d 748,364 N.W.2d 175 (Ct. App. 1985).

Sub. (2) @) requires a hearing be held, not set, within 60 days of the service **of** the answer and allows a continuance only when it is applied for within the 60 day period. State v. Baye, 191 Wis. 2d 334,528 N.W.2d 81 (Ct. App. 1995).

961.56 Burden of proof; liabilities. (1) It is not necessary for the state to negate any exemption or exception in this chapter in any complaint, information, indictment or other pleading or in any trial, hearing or other proceeding under this chapter. The burden of proof of any exemption or exception is upon the person claiming it.

(2) In the absence of proof that a person is the duly authorized holder of an appropriate federal registration or order form, the person is presumed not to be the holder of the registration or form. The burden of proof is upon the person to rebut the presumption.

(3) No liability is imposed by this chapter upon any authorized state, county or municipal officer or employee engaged in the lawful performance of the officer's or employee's duties.

History: 1971 c. 219,307; 1993 a. 482; 1995 **a.** 448 **s.** 307; Stats. 1995 **s.** 961.56.

961.565 Enforcement reports. On or before November 15 annually, the governor and the attorney general shall submit a joint report to the chief clerk of each house of the legislature for distribution to the legislature under s. 13.172 (2) describing the activities in this state during the previous year to enforce the laws regulating controlled substances. The report shall contain recommendations for improving the effectiveness of enforcement activities and other efforts to combat the abuse of controlled substances.

History: 1989 a. 122; 1995 a. 448 s. 308; Stats. 1995 **s.** 961.565.

SUBCHAPTER VI

DRUG PARAPHERNALIA

961.571 Definitions. In this subchapter:

(1) (a) "Drug paraphernalia" means all equipment, products and materials of any kind that are used, designed for use or primarily intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackag-

ing, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance or controlled substance analog in violation of this chapter. "Drug paraphernalia" includes, but is not limited to, any of the following:

1. Kits used, designed for use or primarily intended for use in planting, propagating, cultivating, growing or harvesting of any species of plant that is a controlled substance or from which a controlled substance or controlled substance analog can be derived.

2. Kits used, designed for use or primarily intended for *use* in manufacturing, compounding, converting, producing, processing or preparing controlled substances or controlled substance analogs.

3. Isomerization devices used, designed for use or primarily intended for use in increasing the potency of any species of plant that is a controlled substance.

4. Testing equipment used, designed for use or primarily intended for use in identifying, or in analyzing the strength, effectiveness or purity of, controlled substances or controlled substance analogs.

5. Scales and balances used, designed for use or primarily intended for use in weighing or measuring controlled substances or controlled substance analogs.

6. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, designed for use or primarily intended for use in cutting controlled substances or controlled substance analogs.

7. Separation gins and sifters used, designed for use or primarily intended for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana.

8. Blenders, bowls, containers, spoons and mixing devices used, designed for use or primarily intended for use in compounding controlled substances or controlled substance analogs.

9. Capsules, balloons, envelopes and other containers used, designed for use or primarily intended for use in packaging small quantities of controlled substances or controlled substance analogs.

10. Containers and other objects used, designed for use or primarily intended for use in storing or concealing controlled substances or controlled substance analogs.

11. Objects used, designed for use or primarily intended for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:

a. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls.

b. Water pipes.

c. Carburetion tubes and devices.

d. Smoking and carburetion masks.

e. Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand.

f. Miniature cocaine spoons and cocaine vials.

g. Chamber pipes.

h. Carburetor pipes.

i. Electric pipes.

j. Air–driven pipes.

k. Chilams.

L. Bongs.

m. Ice pipes or chillers.

(b) "Drug paraphernalia" excludes:

1. Hypodermic syringes, needles and other objects used or intended for use in parenterally injecting substances into the human body.

2. Any items, including pipes, papers and accessories, that are designed for use or primarily intended for use with tobacco products.

(2) "Primarily" means chiefly or mainly.

History: 1989 a. 121: 1991 a. 140; 1995 **a. 448 s. 310;** Stats. 1995 s. 961.571.

A tobacco pipe is excluded from **the definition** of drug **paraphernalia under sub.** (1) (b) **2.** The **presence** of **residue of a controlled substance in** the pipe does **not change that result. State v. Martinez, 210 Wis. 2d 397, 563** N.W.2d **922 (Ct. App. 1997).**

961.572 Determination. (1) In determining whether an object is drug paraphernalia, a court or other authority shall consider, in addition to all other legally relevant factors, the following:

(a) Statements by an owner or by anyone in control of the object concerning its use.

(b) The proximity of the object, in time and space. to a direct violation of this chapter.

(c) The proximity of the object to controlled substances or controlled substance analogs.

(d) The existence of any residue of controlled substances or controlled substance analogs on the object.

(e) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he or she knows intend to use the object to facilitate a violation of this chapter; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is designed for use or primarily intended for use as drug paraphernalia.

(f) Instructions, oral or written, provided with the object concerning its use.

(g) Descriptive materials accompanying the object that explain or depict its use.

(h) Local advertising concerning its use.

(i) The manner in which the object is displayed for sale.

(j) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products.

(k) The existence and scope of legitimate uses for the object in the community.

(L) Expert testimony concerning its use.

(2) In determining under this subchapter whether an item is designed for a particular use, a court or other authority shall consider the objective physical characteristics and design features of the item.

(3) In determining under this subchapter whether an item is Primarily intended for a particular use, **a** court or other authority shall consider the subjective intent of the defendant.

History: 1989 a **121; 1991 a** 140, 1995 **a 448 s. 311; Stats** 1995 s. 961.572.

961.573 Possession of drug paraphernalia. (1) No person may use, or **possess** with the primary intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store. contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance or controlled substance analog in violation of this chapter. Any person who violates this subsection may be fined not more than $500 or imprisoned for not more than 30 days or both.

(2) Any person who violates sub. (1) who is under 17 years of age is subject to a disposition under **s.** 938.344 (2e).

(3) No person may use, or possess with the primary intent to use, drug paraphernalia to manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack or store methamphetamine or a controlled substance analog of methamphet-

amine in violation of this chapter. Any person who violates this subsection is guilty of a Class H felony.

History: 1989 a. 121; 1991 a. 39, 140; 1995 a. 27, 77; 1995 a. 448 ss. 312 to 314, 492; Stats. 1995 s. 961.573; 1999 a. 129; 2001 a. 109.

961.574 Manufacture or delivery of drug paraphernalia. (1) No person may deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing that it will be primarily used to plant, propagate, cultivate, grow, harvest, manufachire, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance or controlled substance analog in violation of this chapter. Any person who violates this subsection may be fined not more than $1,000 or imprisoned for not more than 90 days or both.

(2) Any person who violates sub. (1) who is under 17 years of age is subject to a disposition under s. 938.344 (2e).

(3) No person may deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing that it will be primarily used to manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack or store methamphetamine or a controlled substance analog of methamphetamine in violation of this chapter. Any person who violates this subsection is guilty of a Class H felony.

History: 1989 a. 121; 1991 a. 39, 140; 1995 a. 27, 77; 1995 a. 448 ss. 315 to 317, 493; Stats. 1995 s. 961.574; 1999 a. 129; 2001 a. 109.

961.575 Delivery of drug paraphernalia to a minor. (1) Any person 17 years of age or over who violates s. 961.574 (1) by delivering drug paraphernalia to a person 17 years of age or under who is at least 3 years younger than the violator may be fined not more than $10,000 or imprisoned for not more than 9 months or both.

(2) Any person who violates this section who is under 17 years of age is subject to a disposition under s. 938.344 (2e).

(3) Any person 17 years of age or over who violates s. 961.574 (3) by delivering drug paraphernalia to a person 17 years of age or under is guilty of a Class G felony.

History: 1989 a. 121; 1991 a. 39; 1995 a. 27, 77; 1995 a. 448 ss. 318, 494; Stats. 1995 s. 961.575; 1999 a. 129; 2001 a. 109.

961.576 Advertisement of drug paraphernalia. No person may place in any newspaper, magazine, handbill or other publication any advertisement, knowing that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed for use or primarily intended for use as drug paraphernalia in violation of this chapter. Any person who violates this section may be fined not more than $500 or imprisoned for not more than 30 days or both.

History: 1989 a. 121; 1991 a. 140; 1995 a. 448 s. 319; Stats. 1995 s. 961.576.

961.577 Municipal ordinances. Nothing in this subchapter precludes a city, village or town from prohibiting conduct that is the same as that prohibited by s. 961.573 (2), 961.574 (2) or 961.575 (2).

History: 1989 a. 121; 1995 a. 448 s. 320; Stats. 1995 s. 961.577.

SUBCHAPTER VII

MISCELLANEOUS

961.61 Uniformity of interpretation. This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it.

History: 1971 c. 219; 1995 a. 448 s. 322; Stats. 1995 s. 961.61.

961.62 Short title. This chapter may be cited as the "Uniform Controlled Substances Act".

History: 1971 c. 219; 1995 a. 448 s. 323; Stats. 1995 s. 961.62.

Chapter Phar 1

AUTHORITY AND DEFINITIONS

Note: Chapter Phar 1 as it existed on January 31, 1983 was repealed and a new chapter Phar 1 was created effective February 1, 1983.

Phar 1.01 Authority. Rules in chs. Phar 1 to 16 are adopted under authority of ss. 15.08 (5) (b), 227.11 (2), Stats., and ch. 450, Stats.

History: Cr. Register, January. 1953, No. 325, eff. 2–1–83; am. Register, August, 1991, No. 428, eff. 9–1–91; am., Register, December. 1998, No. 516, eff. 1–1–99; am., Register. March, 2000. No. 531. eff. 4–1–00; correction made under s. 13.93 (2m) (b) 7., Stats., Register January 2002 No. 553.

Phar 1.02 Definitions. As used in chs. Phar 1 to 16:

(1) "Board" means the pharmacy examining board.

Note: The board office is located at 1400 East Washington Avenue, Madison, Wisconsin 53702, telephone (608) 266–8794.

(2) "Community pharmacy" means practice in a licensed pharmacy providing pharmaceutical services primarily on an outpatient basis.

(3) "DEA" means the drug enforcement administration.

(4) "Institutional pharmacy" means practice in a licensed pharmacy providing pharmaceutical services primarily on an inpatient basis.

(4m) "Long term care facility" means a facility for the developmentally disabled or other nursing home.

(5) "LTCF" means a long term care facility.

(6) "Managing pharmacist" means a pharmacist designated by the pharmacy owner to have responsibility for and direct control of pharmaceutical operations in a pharmacy.

(7) "NAPLEX" means the north American pharmacy licensing examination.

(8) "Pharmacist" has the meaning given in s. 450.01 (15), Stats.

(9) "Pharmacist–in–charge" means a pharmacist who is physically present in the licensed facility and responsible for the routine operation of a pharmacy for the period of time specified by the managing pharmacist.

(10) "Pharmacy" means any place of practice licensed by the board under s. 450.06, Stats.

(11) "Phannacy owner" means a person or entity to whom a pharmacy license is issued.

(12) "Practice of pharmacy" has the meaning under s. 450.01 (16), Stats.

(13) "PRN" means renew as needed.

(14) "Profcssional service area" means the area of a pharmacy in which prescriptions are compounded or dispensed, hypodermic needles, syringes, poisons and schedule V controlled substances as listed in s. 961.22, Stats., and ch. CSB 2 are available, or where patients are consulted.

(15) "Terminal illness" means an incurable condition caused by injury or illness that reasonable medical judgment finds would cause death.

History: Cr. Register, January, 1983, No. 325, eff. 2–1–83; am. (intro.), renum. (2) to (9) to be (6) to (12) and (14) and am. (8), (10) and (12), cr. (2) to (5) and (13), Register, August: 1991, No. 428, eff. 9–1–91; cr. (4m) and (IS), Register, September, 1994, No. 465, eff. 10–1–94; am. (7), (8), (11) and (14), Register, December, 1998, No. 516. eff. 1–1–99; am. (intro.), Register, March, 2000, No. 531, eff. 4–1–00; emerg. cr. (3c), (4c), (4e), and (14m), eff. 1–1–02; correction in (intro.) made under s. 13.93 (2m) (b) 7, Stats., Register January 2002 No. 553.

Chapter Phar 2

APPLICATION FOR PHARMACIST LICENSE

Note: Chapter Phar 2 as it existed on January 31, 1983, was repealed and a new chapter Phar 2 was created effective February 1, 1983.

Phar 2.01 Qualifications for original licensure. An applicant for original licensure as a pharmacist may be admitted to examination under ch. 450, Stats., if the applicant:

(1) Has been graduated from a school or college of pharmacy approved by the board or has obtained certification by the foreign pharmacy graduate examination committee.

(2) Has completed an internship in the practice of pharmacy.

Note: 2001 Wis. Act 16 repealed s. 450.045, Stats.

History: Cr. Register, January, 1983, No. 325, eff. 2-1-83; am. (2), Register, August, 1991, No. 428, eff. 9-1-91; am. (1), Register, January, 1996, No. 481, eff. 2-1-96; am. (intro.), Register, December, 1998, No. 516, eff. 1-1-99; emerg. am. (2), eff. 1-1-02; CR 01-091: am. (1), Register January 2002 No. 553, eff. 2-1-02; CR 01-134: am. (2), Register July 2002 No. 559, eff. 8-1-02.

Phar 2.02 Application procedure for original licensure. (1) Each applicant for original licensure as a pharmacist shall submit a completed notarized application no later than 45 days prior to the examination date on forms provided by the board. The application shall include all of the following:

(a) The signature of the applicant.

(b) A statement from the dean of the school of pharmacy or the academic records office of the respective educational institution that the applicant has graduated from the pharmacy school.

(c) A recent notarized photograph.

(d) Evidence of having completed an internship in the practice of pharmacy which shall consist of one or more of the following:

1. A statement from the dean of the school of pharmacy or the academic records office of the respective educational institution certifying the number of hours that the applicant has successfully completed in a practical experience program described in ch. Phar 17.

2. A statement from a supervising pharmacist certifying the number of hours that the applicant was supervised by that supervising pharmacist in an internship in the practice of pharmacy described in ch. Phar 17.

3. Verification of practical experience acquired by the applicant in another state as described in ch. Phar 17, which is approved and verified by the board or by the agency which is the equivalent of the board in the state in which the practical experience was acquired.

(e) The fees required under s. 440.05 (1), Stats.

Note: Applications are available upon request to the board office located at 1400 East Washington Avenue, P. O. Box 8935, Madison, WI 53708.

(2) Any change of name made prior to admission to examination shall be supported by an affidavit satisfactory to the board.

History: Cr. Register, January, 1983, No. 325, eff. 2-1-83; am. (1) (intro.) and (d), Register, December, 1998, No. 516, eff. 1-1-99; emerg. renum. (1) (d) to be (1) (e), cr. (1) (d), eff. 1-1-02; CR 01-134: renum. (1) (d) to be (1) (e), cr. (1) (d), Register July 2002 No. 559, eff. 8-1-02.

Phar 2.03 Examinations for original licensure. (1) An applicant for original licensure as a pharmacist is required to pass the examinations identified in s. Phar 4.02 (1), **(2)** and (3).

(2) The coverage and conduct of examinations administered by the board are specified in ch. Phar 4.

(4) An applicant for licensure as a pharmacist shall not be eligible to be admitted to the NAPLEX or the multi-state pharmacy jurisprudence examination prior to obtaining certification by the foreign pharmacy graduate examination committee and being within 360 credit hours of completing an internship in the practice of pharmacy or 60 days before graduation from a school or college of pharmacy approved by the board. An applicant may not be admitted to the practical examination before the test date which immediately follows completion of the applicant's internship in the practice of pharmacy.

History: Cr. Register, January, 1983, No. 325, eff. 2-1-83; am. (1) and (3), cr. (4) and (5), Register, August, 1991, No. 428, eff. 9-1-91; am. (1), (4) and (5) and r. (3), Register, December, 1998, No. 516, eff. 1-1-99; CR 00-157: am. (1) Register May 2002 No. 557 eff. 6-1-02; CR 01-134: am. (4), r. (5), Register July 2002 No. 559, eff. 8-1-02.

Phar 2.04 Qualifications for persons licensed in another state. A pharmacist holding a license to practice pharmacy in another state may become licensed in Wisconsin if the applicant:

(1) Has been graduated from a school or college of pharmacy approved by the board, or has obtained certification by the foreign pharmacy graduate examination committee.

(2) Has passed the required examinations administered by the board.

History: Renum. from Phar 3.01, Register, December, 1998, No. 516, eff. 1-1-99; CR 01-091: am. (1), Register January 2002 No. 553, eff. 2-1-02.

Phar 2.05 Application procedure for persons licensed in another state. (1) Each applicant licensed as a pharmacist in another state shall file with the board, no later than 30 days prior to the examinations, the following:

(a) Completed application form.

(b) The fee specified under s. 440.05 (2), Stats.

(2) Verification of license shall be forwarded from the original state of licensure by examination.

(3) Credentials received in a name other than that on the original application shall be supported by a change of name affidavit satisfactory to the board.

History: Renum from Phar 3.02 and am. (1) (intro.), Register, December, 1998, No. 516, eff. 1-1-99

Phar 2.06 Examinations for persons licensed in another state. (1) An applicant licensed as a pharmacist in another state who is engaged in the active practice of pharmacy, shall take the multi-state pharmacy jurisprudence examination described in s. Phar 4.02 (1). The applicant shall submit, on forms furnished by the board, information describing his or her-practice experience preceding the filing of the application. The board may review requests for reciprocity.

(2) DEFINITION. In this section, "active practice of pharmacy" means having engaged in at least 2,000 hours of the practice of pharmacy within the 12 months preceding application for licensure in Wisconsin or at least 2,000 hours of the practice of pharmacy comprised of no less than 500 hours in each of 3 of the 4, 12-month periods preceding application for licensure in Wisconsin.

(3) EQUIVALENCY EXAMINATION. **Any** applicant who has not engaged in the active practice of pharmacy shall take and pass each of the following examinations:

(a) Practical examination.

(b) Multi−state pharmacy jurisprudence.

(4) COVERAGE AND CONDUCT. The coverage and conduct of examinations administered by the board are specified in ch. Phar 4.

History: Renum. from **Phar** 3.04 and **am.** (1) (3) (intro.), (a), (b), and (c), Register, December, 1998, No. **516,** eff. 1–1–99; CR 00–157: am. (1), r. (3) (a), renum. and **am.** (3) (b) to be (3) (a), and renum. (3) (c) **to** be **(3)** (b) Register May 2002 No. 557, eff. 6–1–02.

Chapter Phar 4

EXAMINATIONS

Phar 4.01 Administration. (1) Examinations may be written, oral, or practical.

(2) Examinations are conducted in the English language only.

(3) At least **10** days prior to the examination, the applicant shall be mailed an admission card and that card shall be presented at the door of the examination room, with a driver's license or passport photograph.

(4) A number shall be assigned to each applicant. Rules of conduct shall be provided at the beginning of the examination.

(5) An applicant found by the board to have violated rules of the examination may be denied licensure by the board.

History: Cr. Register. January, 1983, No. 325, eff. 2–1–83; am. (3), Register, December, 1998, No. 516, eff. 1–1–99.

Phar 4.02 Competencies tested. Competencies are tested by examination as follows:

(1) The multi–state pharmacy jurisprudence examination shall determine an applicant's competence to practice within federal laws and regulations and Wisconsin laws and rules governing the practice of pharmacy.

(2) The practical examination shall determine an applicant's competence in compounding and dispensing medications, which includes consultation of patients.

(3) NAPLEX shall determine an applicant's competence in the basic principles and professional areas within the practice of pharmacy.

(4) An otherwise qualified applicant shall be provided with reasonable accommodations, as required by the Americans with disabilities act.

History: Cr. Register, January, 1983, No. 325, eff. 2–1–83; emerg. r. and recr. eff. 5–21–85; r. and recr. Register. November, 1985, No. 359. eff. 12–1–85; **am.** (1) and (2), Register, August, 1991, No. 428, eff. 9–1–91; am. (4), Register. January, 1996, No. 481, eff. 2–1–96; am. (1) and (5), r. (2), cr. (6), Register, December, 1998, No. 516, eff. 1–1–99; **CR 00–157: r. (3), renum. and am.** (4) **to be (2) and renum. (5) and (6) tn be (3) and (4) Register May 2002 No. 557, eff. 6–1–02.**

Phar 4.03 Passing scores. (1) The passing scores set by the board represent the minimum competency required to protect public health and safety.

(2) Each examination specified in s. Phar 4.02 is scored separately. An applicant shall achieve a passing score on each required examination to qualify for licensure.

(3) The score required to pass an examination shall be based on the board's determination of the level of examination performance required for minimum acceptable competence in the profession. The board shall make the determination after consultation with experts in the subject matter of the examination who have reviewed a representative sample of the examination questions and available candidate performance statistics, and shall set the passing score for the examination at that point which represents minimum acceptable competence in the profession.

History: Cr. Register, January, 1983, No. 325, eff. 2–1–83; emerg. am. (2), r. and recr. (3) and (4), r. (5) and (6), eff. 5–21–85; am. (2), r. and recr. (3) and (4), r. (5) and (6). Register. November, 1985, No. 359. eff. 12–1–85; r. (3), renum. **(4) to** be (3) and am. Register, May, 1986, No. 365, eff. 61–86; r. and recr. (3), Register, December, 1998, No. 516. eff. 1–1–99.

Phar 4.035 Unauthorized assistance. An applicant may not give or receive unauthorized assistance during the examination. The action taken by the board when unauthorized assistance occurs shall be related to the seriousness of the offense. These actions may include withholding the scope of the applicant, entering a failing grade for the applicant, and suspending the ability of the applicant to sit for the next scheduled examination after the examination in which the unauthorized assistance occurred.

History: Cr., Register, December, 1998, No. 516. eff. 1–1–99.

Phar 4.04 Scoring. (1) The board shall send written notification of results to applicants.

(2) An applicant shall be offered the opportunity to make written comments and objections within 30 days after notification of the examination results.

(3) Any unsuccessful applicant may request in writing that his or her answer sheet be rescored by hand to verify the accuracy of scoring.

(4) The cost of rescoring shall be paid by the applicant.

History: Cr. Register, January, 1983, No. 325, eff. 2–1–83.

Phar 4.045 Examination review. (1) An applicant who fails an examination administered by the board may request a review by the applicant of that examination by filing a written request to the board within 45 days after the date on which the examination results were mailed to the applicant.

(2) An examination review shall be conducted under the following conditions:

(a) The time for review shall be limited to one hour.

(b) The examination shall be reviewed only by the applicant and in the presence of a proctor.

(c) The proctor may not respond to inquiries by the applicant regarding allegations of examination error.

(d) An applicant shall be permitted only one review of the failed examination each time it is taken and failed.

History: Cr. Register, December, 1998, No. 516, eff. 1–1–99.

Phar 4.046 Claim of examination error. (1) An applicant wishing to claim an error regarding specific questions or procedures on an examination administered by the board shall file a written request on a form provided for this purpose in the board office within 30 days after the date the examination was reviewed. The request shall include:

(a) The applicant's name and address.

(b) The type of registration applied for,

(c) A description of the alleged error, including reference text citations or other supporting evidence for the applicant's claim.

(2) The request shall be reviewed by the board in consultation with an expert in the subject matter of the examination. The applicant shall be notified in writing of the board's decision.

History: Cr. Register, December, 1998, No. 516, eff. 1–1–99.

Phar 4.05 Failure and reexamination. (2) An applicant who fails to achieve a passing score on any examination specified in s. Phar 4.02 is eligible for reexamination. An applicant who twice fails any licensing examination specified in s. Phar 4.02 is not eligible for further examination until the applicant has satisfactorily completed additional preparation as directed and

approved by the board. This condition on eligibility also applies to each third and subsequent failure.

(3) An application for reexamination shall be made on forms provided by the board. An applicant shall remit the reexamination fee.

Note: A list of all current examination fees may be obtained at no charge from the Office of Examinations, Department of Regulation and Licensing, **1400** East Washington Avenue. **P.O. Box 8935,** Madison, WI **53708.**

Note: An application form may be obtained upon request to the hoard office located at 1400 East Washington Avenue, Madison, Wisconsin **53702.**

History: Cr. Register, January, **1983,** No. **325,** eff. **2–1–83;** emerg. r. and recr. eff. **5–21–85;** r. and recr. Register, November, 1985, No. **359,** eff. **12–1–85;** r. and recr. (1), **r.** (2) to (4), renum. (5) to **(7)** to be **(2)** to **(4),** Register, May. **1986,** No. **365,** eff. **6–1–86;** am. (2), Register, August, 1991, No. **428, eff. 9–1–91;** am. (3), Register, June, 1994, No. **462,** eff. 7–1–94; **r.** (1) and (4), Register, December, 1998, No. **516,** eff. **1–1–99.**

Chapter Phar 5

LICENSE RENEWAL

Phar 5.01 Requirements. (1) Pharmacists, pharmacies, manufacturers and distributors licensed under ch. 450, Stats., and otherwise qualified for renewal, may continue to be licensed biennially by applying for renewal and paying the fee specified in s. 440.08 (2), Stats.

(2) No one without a current renewal certificate may engage in the practice of pharmacy, nor hold himself or herself out to be a pharmacist nor use the title or letters "Pharmacist" or "Registered Pharmacist" or "R.Ph."

(3) No pharmacy, manufacturer or distributor may operate without a current license.

History: Cr. Register, January, 1983. No. 325, eff. 2–1–83; am. (1) and (2), Register, December, 1998. No. 516, eff. 1–1–99.

Phar 5.02 Change of name or address. (1) A pharmacist shall notify the board in writing when his or her name has been legally changed, within 30 days of the change.

(2) A pharmacist shall notify the board in writing when his or her address has been changed, within 30 days of the change.

History: Cr. Register, January, 1983, No. 325, **eff.** 2–1–83; **am.** (1) and (2). Register, December, 1998, No. 516, eff. 1–1–99.

Phar 5.03 Display of licenses. A pharmacist who engages in the practice of pharmacy shall display his or her license in a manner conspicuous to the public view. Biennial renewal cards shall be displayed with the license when received. Only current renewal cards may be displayed. A pharmacist may not display his or her license in any place other than the pharmacy where he or she engages in the practice of pharmacy. A pharmacist who engages in the practice of pharmacy at more than one pharmacy shall display his or her license and renewal card in the pharmacy at which he or she practices most.

History: Cr. Register, January, 1983, No. 325, eff. 2–1–83; am. Register. January, 1996, No. 481. eff. 2–1–96.

Phar 5.04 Renewal prohibited; relicensure. Any person whose license is currently suspended or revoked may not renew his or her license. A person whose license has been **suspended** or revoked and subsequently reinstated by the board, and who is otherwise qualified for renewal, may renew his or her license upon completion of a renewal form and filing of the required renewal fee.

History: Cr. Register, January, 1983, No. 325, eff. 2–1–83; **am.**, Register, December, 1998, No 516. eff. 1–1–99.

Phar 5.05 Requirements for late renewal; reinstatement. (1) An individual who files an application for renewal of a license within **5** years after the renewal date may be reinstated by filing with the board all of the following:

(a) An application for renewal on a form prescribed by the department.

(b) The fee required under s. 440.05 (2), Stats., plus the applicable late renewal fee required under s. 440.08 (3), Stats.

(2) An individual who files an application for renewal of a license **5** years or more after the renewal date may be reinstated by filing with the board all of the following:

(a) An application for renewal on a form prescribed by the department.

(b) The fee required under s. 440.08 (2), Skits., **plus** the applicable late renewal fee required under **s.** 440.08 (3), Stats.

(c) Verification of successful completion of examinations or educational requirements, or both, as the board may prescribe, provided that the examination or education requirements may not be more extensive than those required to obtain an initial license.

History: Cr. Register, December, 1998. No. 5**16,** eff. 1–1–99.

Chapter Phar 6

PHARMACY LICENSES AND EQUIPMENT

Note: Chapter Phar 6 as it existed on January 31, 1983, was repealed and a new chapter Phar 6 was created effective February 1, 1983.

Phar 6.01 Licenses; application. Requirements and procedures for applying for a pharmacy license are specified in s. **450.06,** Stats. Approved application forms are available from the board. Appointments for the required pharmacy inspection may be made by contacting the board office. **A** license application and fee shall be on file with the board at least **30** days prior to the granting of the pharmacy license. A pharmacy may not operate unless a pharmacy license has been granted. Board action shall be taken within **60** business days of receipt of a completed pharmacy application, as provided in s. RL **4.03.**

Note: Applications are available upon request to the board office located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

History: Cr. Register, January. 1983, No. 325, eff. 2–1–83; correction made under s. 13.93(2m) (b) 7., Stats., Register, January, 1989, No. 397; am. Register, August, 1991, No. 428, eff. 9–1–91; am.. Register, December. 1998, No. 516, eff. 1–1–99.

Phar 6.02 Licenses; change of location or ownership. (1) A pharmacy license authorizes a pharmacy to operate only at the location designated on the license. Licenses may not be transferred to another location.

(1m) A hospital which has a pharmacy area providing outpatient pharmacy services which **is** physically separate from, and not contiguous to the area from which inpatient pharmacy services are provided, shall have a pharmacy license for the outpatient pharmacy in addition to a license for the inpatient pharmacy.

(2) Any change in pharmacy ownership shall be reported to the board office and the pharmacy license of the former owner returned. **A** pharmacy license shall be granted to the new pharmacy owner before the pharmacy may operate.

History: Cr. Register, January, 1983, No. 325, eff. 2–1–83; am. Register, August, 1991, No. 428, eff. 9–1–91; cr. (1m), Register. February. 1996. No. 482, eff. 3–1–96.

Phar 6.03 Changes in managing pharmacist. The pharmacy owner shall report to the board any change of managing pharmacist within 5 days following the change.

History: Cr. Register. January. 1983, No. 325, eff. 2–1–83.

Phar 6.04 Floor design. (1) PROFESSIONAL SERVICE AREA. The professional service area of a pharmacy shall not be less than **250** sq. ft. **No** more than 20% of the space may be used for storage of bulk pharmaceuticals. If the pharmacy is open at any time solely as a non–prescription or sundry outlet, without a pharmacist present, the professional service area shall be secured as specified in sub. **(3).** A variance to the **250** sq. ft. professional service area requirement may be authorized by the board upon submission of a specific plan describing the manner in which the proposed professional service area plan varies from the requirement.

(2) PRESCRIPTION COUNTER SPACE. A pharmacy shall have a prescription counter with a free working surface of **18** or more inches in width and at least **12** square feet in area. This free–working surface must be used only for the compounding and dispensing of prescriptions.

(3) PROFESSIONAL SERVICE AREA REQUIREMENTS WHERE PHARMACIST IS ABSENT. (a) **A** pharmacy may convert to a non–prescription or sundry outlet without a phannacist present if the following requirements of the professional service area are met:

1. **A** secured, physical barrier surrounds the professional service area of the pharmacy and precludes access to the area by unlicensed personnel. **A** secured barrier may be constructed of other than a solid material with a continuous surface. If constructed of other than a solid material, the openings or interstices in the material shall not be large enough to permit removal of items from the professional service area by any means. Any material used in the construction of the bamer shall be of sufficient strength and thickness that it cannot be readily or easily removed, penetrated or bent. The plans and specifications of the barrier shall be submitted to the board for approval.

2. The barrier **is** locked in the absence of the pharmacist.

3. A patient's telephone request to renew a certain prescription may be accepted, but a telephone message from a practitioner giving a new prescription order or renewal authority may not be accepted.

5. Signs of reasonable size are posted at the entrance of the building and the professional service area prominently displaying the hours the pharmacist will be on duty.

6. The manner in which the telephone is answered does not imply that the location is, at that time, operating as a pharmacy.

7. The pharmacy examining board office is notified of the hours during which the establishment is operated as a sundry outlet.

(b) The managing phannacist is responsible for compliance with all professional service area security requirements.

(4) PROFESSIONAL SERVICE AREA REMODELING. Any modifications of the approved floor plan shall be submitted to and approved by the board or its designee. Board action must be taken within **60** days.

History: Cr. Register, January, 1983, No. 325. eff. 2–1–83; cr. (4), Register, August, 1991, No. 428, eff. 9–1–91; r. (3) (a) 4., Register. January, 1996, No. 481, eff. 2–1–96.

Phar 6.05 Sanitation. The professional service area of a pharmacy shall have a sink convenient and suitable for cleaning pharmaceutical equipment and supplied with hot and cold running water. Detergent and a waste disposal container also shall be provided in the professional service area.

History: Cr. Register, January, 1983, No. 325, eff. 2–1–83.

Phar 6.06 Minimum equipment. (1) The professional service area of a pharmacy shall have equipment of appropriate design and size for the intended pharmacy practice consisting of at least the following equipment:

(a) An electronic balance that has a sensitivity of 1 milligram, or a mechanical torsion prescription balance that has a sensitivity reciprocal of 6 milligrams.

(b) One set of accurate weights appropriate for any mechanical torsion prescription balance being used for the purpose of compounding.

(c) A supply of transparent glass graduates in single metric scale capable of measuring 5 ml. to 100 ml.

(d) An accurate device to measure less than 5 ml.

(e) **A** supply of Wedgewood and glass mortars and pestles.

(f) A supply of stainless steel spatulas and at least one hard rubber spatula.

(g) A supply of acid, base and solvent–resistant funnels.

(h) A heating device for any preparation that requires heat for compounding.

(i) Ointment slab or ointment paper

(j) The latest available or immediately accessible version of federal and state pharmacy laws consisting of:

1. Drug enforcement administration regulations, 21 CFR 1300 to end.

2. Wisconsin pharmacy laws, ch. 450, Stats.

3. Wisconsin controlled substances act, ch. 961, Stats.

4. Wisconsin administrative code, rules of the pharmacy examining board.

(k) References appropriate to the individual pharmacy practice. These references should include, but are not limited to, the following topics: drug interactions; patient counseling; compounding and pharmaceutical calculations; and generic substitution.

(L) The telephone number of a poison center. This number shall be conspicuously posted in the prescription department.

(2) Any person may apply for a variance to the application of any provisions in sub. (1) (a) through (i) by filing a written request with the board at P.O. Box 8935, Madison, Wisconsin 53708 stating the reasons for the variance.

History: Cr. Register, January. 1983, No. 325, eff. 2–1–83; r. and recr. Register, January: 1989, No. 397. eff. 2–1–89; correction in (2) made under 13.93 (2m) (b) 6., Stats., Register, January, 1989, No. 397; am. (1) (j) 3., Register, December. 1998, No. 516, eff. 1–1–99; CR01-023: am. (1) (intro.) and (a) to (c), (j) (intro.) and (k), Register, August 2001 No. 548 eff. 9–1–01.

Phar 6.07 Storage. (1) The professional service area shall have a refrigerator adequate for the storage of biological and other drugs requiring refrigeration.

(2) The professional service area shall have sufficient shelf, drawer or cabinet space for the proper storage of a representative stock of prescription labels, an assorted stock of prescription containers, and an adequate stock of prescription drugs, chemicals and required pharmacy equipment.

(3) Controlled substances shall be stored in a securely locked, substantially–constructed cabinet or dispersed throughout the inventory of non–controlled substances in a manner that obstructs theft.

History: Cr. Register. January, 1983. No. 325, eff. 2–1–83.

Phar 6.08 Security. Effective January 1, 2000, a pharmacy shall have a centrally monitored alarm system in the pharmacy or the immediate physical structure within which the pharmacy is located.

History: Cr. Register, December, 1998. No. 516, eff. 1–1–99.

Chapter Phar 7

PHARMACY PRACTICE

Phar 7.01 Minimum procedures for compounding and dispensing. (1) Except as provided in sub. (4), a pharmacist or pharmacist–intern who compounds or dispenses according to a prescription order shall follow the procedures described in this rule and other applicable procedures. The pharmacist or pharmacist–intern as directed and supervised by a pharmacist shall:

(a) Receive electronic or oral prescription orders of a prescriber, review all original and renewal prescription orders, whether electronic, written or oral, and determine therapeutic compatibility and legality of the prescription order. The review shall include, when indicated or appropriate, consultation with the prescriber.

(b) Read and interpret a prescriber's directions for use for the purpose of accurately transfemng the instructions to the prescription label.

(c) Select, compound, mix, combine, measure, count and otherwise prepare drugs needed to dispense a prescription except that an agent of the pharmacist may procure, measure or count prefabricated dosage forms if a pharmacist verifies accuracy of the agent's action.

(d) Make a final check on the accuracy and correctness of the prescription. For all original and renewed prescriptions, the prescription order record shall identify the pharmacist responsible for the prescription.

(e) Give the patient or agent appropriate consultation relative to the prescription except that prescriptions may be delivered by an agent of the pharmacist to a patient's residence if the delivery is accompanied by appropriate directions and an indication that consultation is available by contacting the pharmacist. The consultation requirement applies to original and renewal prescription orders and, except when prescriptions are delivered to a patient's residence, is not satisfied by only offering to provide consultation.

(em) Transfer the prescription to the patient or agent of the patient.

(f) Receive, when required by law and standard professional practice, permission to renew from authorized prescribers, and note on the prescription order, medication profile record or uniformly maintained and readily retrievable document the following information:

1. Date renewed.
2. Name of practitioner authorizing renewal, if different from the original prescriber.
3. Quantity of drug dispensed.
4. Identification of the pharmacist renewing the prescription.

(2) Subsection (1) (d) and (e) does not prohibit institutional pharmacists or community pharmacists serving institutions from receiving prescription orders, dispensing and returning prescription medications consistent with accepted inpatient institutional drug distribution systems. Subsection (1) applies to any institutional pharmacy dispensing to outpatients, including prescriptions for discharged patients.

(3) A pharmacist may supervise no more than one pharmacy intern and 4 pharmacy technicians engaged in compounding and dispensing activities as described in sub. (1), except a higher ratio may be authorized by the board upon request to and approval by the board of a specific plan describing the manner in which additional interns or pharmacy technicians shall be supervised.

(4) A system for compounding and dispensing not in conformance with subs. (1) to *(3)* may be used if reviewed and approved by the board.

History: Cr. Register, January. 1983, No. *325*, eff. 2–1–83; am. (1) (intro.), (d) and (f) (intro.), Register, August, 1991, No. 425, eff. Y–1–91; am. (1) (e), Register. January, 1996, No. 481, eff. 2–1–96; am. (1) (a), (e), (f) (intro)., (3) and cr. (1) (em), Register, December, 1998, No. 516, eff. 1–1–99; ant. (1) (a), Register. November, 1999, No. 527, eff. 12–1–99; am. (3), Register, April. 2001, No. 544, eff. **5–1–01.**

Phar 7.015 Pharmacy technicians. (1) As used in this section, "pharmacy technician" means a non–pharmacist or non–pharmacist intern who, under the general supervision of a pharmacist who regularly coordinates, directs and inspects the activities of the pharmacy technician, assists the pharmacist in the technical and nonjudgmental functions related to the practice of pharmacy in the processing of prescription orders and inventory management. "Pharmacy technician" does not include ancillary persons which include, clerks, secretaries, cashiers or delivery persons, who may be present in the pharmacy.

(2) A pharmacist may delegate technical dispensing functions to a pharmacy technician, but only under the general supervision of the pharmacist where the delegated functions are performed. Technical dispensing functions include:

(a) Accepting written or electronic prescription orders of the prescribing practitioner or from the prescribing practitioner's agent.

(b) Accepting original oral prescription orders from the prescribing practitioner or prescribing practitioner's agent, if the conversation is recorded and listened to and verified by the pharmacist prior to dispensing.

(c) Requesting authorization for a refill from the prescribing practitioner.

(d) Accepting oral authorization for a refill from the prescribing practitioner or prescribing practitioner's agent, provided there are no changes to the original prescription order.

(e) Accepting a request from a patient to refill a prescription.

(f) Obtaining and entering patient or prescription data into the patient information system.

(g) Preparing a prescription label.

(h) Retrieving medication from stock, counting or measuring medication, and placing the medication in its final container.

(i) Reconstituting prefabricated dosage forms.

(j) Compounding pharmaceuticals pursuant to written policies and procedures.

(k) Affixing a prescription label to its final container.

(L) Placing ancillary information on the prescription label.

(m) Prepackaging and labeling drugs for dispensing by a pharmacist.

(n) Preparing unit dose carts for final review by a pharmacist.

(o) Retrieving and transporting stock medication to and from pharmacist approved areas.

(p) Other technical functions that do not require the professional judgment of a pharmacist.

(3) A pharmacy technician may not do any of the following:

(a) Provide the final verification for the accuracy, validity, completeness, or appropriateness of a filled prescription or medication order.

(b) Perform any of the following tasks:

1. Participate in final drug utilization reviews.

2. Make independent therapeutic alternate drug selections.

3. Participate in final drug regimen screening, including screening for therapeutic duplication, drug–to–drug interactions, incorrect dosage, incorrect duration of treatment, drug allergy reactions and clinical abuse or misuse.

4. Perform any act necessary to be a managing pharmacist.

5. Administer any prescribed drug products, devices or vaccines.

(cj Provide patient counseling, consultation, or patient specific judgment, such as interpreting or applying information, including advice relating to therapeutic values, potential hazards and uses.

(d) Transfer the prescription to the patient or agent of the patient.

(4) The pharmacist shall provide the final verification for the accuracy, validity, completeness, and appropriateness of the patient's prescription prior to the delivery of the prescription to the patient or the patient's representative.

History: Cr. Register, April, 2001, No. 544, eff. 5–1–01.

Phar 7.02 Prescription label; name of drug or drug product dispensed. No prescription drug may be dispensed unless the prescription label discloses the brand name and strength, or the generic name, strength, and manufacturer or distributor of the drug or drug product dispensed unless the prescribing practitioner requests omission of the above information. The prescription label shall not contain the brand or generic name of any drug or drug product other than that actually dispensed.

History: Cr. Register, January, 1983, No. 325, eff. 2–1–83; Register, August, 1991, No. 428, eff. 9–1–91; am. Register, January, 1996, No. 481. eff. 2–1–96.

Phar 7.03 Prescription renewal limitations. A prescription order for any drug other than controlled substances, which bears renewal authorization permitting the pharmacist to renew the prescription as needed (PRN) by the patient, shall not be renewed beyond one year from the date originally prescribed. No prescription order containing either specific or PRN renewal authorization is valid after the patient–physician relationship has ceased.

History: Cr. Register. January, 1983, No. 325. eff. 2–1–83; Register, August, 1991, No. 428, eff. 9–1–91.

Phar 7.04 Return or exchange of health items. (1) In this section:

(a) "Health item" means drugs, devices, hypodermic syringes, needles or other objects for injecting a drug, medicines, or items of personal hygiene.

(b) "Inpatient health care facility" means any hospital, nursing home, county home, county mental hospital, tuberculosis sanitarium or similar facility, but does not include community–based residential facilities, jails or prison facilities.

(2) No health items after taken from a pharmacy where sold, distributed or dispensed, may be returned, except for any of the following:

(a) From an inpatient health care facility, provided they are in their original containers and the pharmacist determines the contents are not adulterated or misbranded.

(b) Where the health items were dispensed in error, were defective, adulterated, misbranded, or dispensed beyond their expiration date.

(c) When in the professional judgment of the pharmacist substantial harm could result to the public or a patient if they were to remain in the possession of the patient, patient's family or agent, or other person.

(3) Health items returned to a pharmacy pursuant to sub. **(2)** (b) and (c), may not be sold, resold, or repackaged and sold or resold, given away, or otherwise distributed or dispensed. Returned health items shall either be destroyed at the pharmacy or delivered for destruction or other disposal by an authorized person or entity.

(4) It is not a "return" for a patient or agent of a patient to deliver a previously dispensed drug or device to a pharmacy for the purpose of repackaging and relabeling of that previously dispensed drug or device, and subsequent return of the drug or device for the same patient's use.

Note: The DEA does not permit the return of controlled substances to a pharmacy from a non–DEA registrant under any circumstances.

History: Cr. Register, January, 1983, No. 325, eff. 2–1-83; am. Register, August, 1991, No. 428, eff. 9–1–91; r. and recr., Register, December, 1998, No. 516, eff. 1–1–99.

Phar 7.05 Prescription records. (1) A record of all prescriptions dispensed shall be maintained for a period of 5 years after the date of the last renewal.

(2) All systems used for maintaining a record of any prescription dispensing shall include:

(a) Patient's identification.

(b) Name, strength and dosage form of the drug product dispensed.

(c) Quantity dispensed.

(dj Date of all instances of dispensing.

(e) Practitioner's identification.

(f) Pharmacist's identification.

(g) Retrieval designation.

(3) (a) Except as provided in sub. (5), the transfer of prescription order information for the purpose of dispensing is permissible between pharmacies on an unlimited basis pursuant to the following requirements:

1. The transfer is communicated directly between 2 pharmacists and the pharmacist making the transfer records the following information:

a. The word "VOID' is written on the face of the invalidated prescription order.

b. The name and address of the pharmacy to which it is transferred, the name of the pharmacist receiving the prescription order, the date and the name of the pharmacist transferring the information are recorded on the reverse side of the invalidated prescription order.

(b) The pharmacist receiving the transferred prescription order information shall record in writing the foliowing:

1. The word "TRANSFER" on the face of the transferred prescription order.

2. The date of issuance of the original prescription order.

3. The original number of renewals authorized on the original prescription order.

5. The number of valid renewals remaining and the date of the last renewal.

6. The pharmacy's name, address, and the prescription order number from which the prescription order information was transferred.

7. The name of the pharmacist making the transfer.

8. The name, address and telephone number of the pharmacy from which the original prescription order was transferred if different from subd. 6.

(c) The original and transferred prescription orders shall be maintained for a period of 5 years from the date of the last renewal.

(4) A written copy of any prescription order for a prescribed drug provided by a pharmacist shall be identified in writing as "COPY — FOR INFORMATION ONLY". No prescribed drug may be dispensed based on an infomiation copy.

(5) The transfer of original prescription order information for the purpose of renewal dispensing of a controlled substance is permissible between **2** pharmacies only on a one–time basis. However, pharmacies having access to a common central processing unit are not limited in the transfer of original prescription order information pertaining to controlled substances for the purpose of renewal dispensing if prior written approval is received from the board.

Note: This procedure requires a variance **from** the federal drug enforcement administration (DEA) for controlled substances. Requests shall be filed with the Administrator, Drug Enforcement Administration, Department of Justice, Washington, **D.C.** 20537.

(6) A computerized system may be used for maintaining a record, as required under this section, of prescription dispensing and transfers of prescription order information for the purposes of renewal dispensing, if the system:

(a) Is capable of producing a printout of any prescription data which the user pharmacy is responsible for maintaining. The system shall be designed so that the pharmacy can receive the printout within 48 hours after requesting the printout.

(b) Is equipped with an auxiliary procedure which, during periods of down–time, shall be used for documentation of prescription dispensing. The auxiliary procedure shall ensure that prescription renewals are authorized by the original prescription order, that the maximum number of prescription renewals has not been exceeded and that all of the appropriate data are retained for on–line entry as soon as the computer system is again available for use.

History: Cr. Register, January, 1983, No. 325, eff. 2–1–83; cr. (5), Register, September, 1987, No. **381,** eff. 10–1–87; CR 00–165: am. (3) (a) (intro.), (b) **6.,** (c), (5) and (6)(intro.), r. (3) (b) 4.. cr. (3) (b) 8., Register July 2001, No. 547 eff. 8–1–01.

Phar 7.065 Answering machines in pharmacies. Oral prescription orders may be received at a pharmacy via a telephone answering device and dispensed by the pharmacist if the voice of the physician or physician's agent is known to the pharmacist, and provided other requirements of reducing the prescription order to writing, labeling and filing are met.

History: Cr. Register, December, 1998, No. **516,** eff. 1–1–99.

Phar 7.07 Medication profile record system. (1) An individual medication profile record system shall be maintained in all pharmacies for persons for whom prescriptions, original or renewal, are dispensed for outpatient use. The system shall be capable of permitting the retrieval of information. The system need not be limited to individual medication profile records.

(2) The following minimum information shall be retrievable:

(a) Patient name, or other identifying information.

(b) Address of the patient.

(c) Birth date of the patient if obtainable.

(d) Name of the drug product dispensed.

(e) Strength of the drug product dispensed.

(f) Dosage form of the drug product dispensed.

(g) Quantity of the drug product dispensed.

(h) Directions for use.

(i) Retrieval designation assigned to the prescription order.

(j) Date of all instances of dispensing, for original and renewal prescriptions.

(k) Practitioner identification.

Note: This subsection incorporates renewal dispensing information required by federal law (21 CFR 1306.22) and state law (s. 450.11 (5), Stats.).

(3) The pharmacist shall be responsible for attempting to ascertain and record any patient allergies, adverse drug reactions, drug idiosyncrasies, and any chronic conditions which may affect drug therapy as communicated by the patient or agent of the patient. If none, this should be indicated.

(4) At the time a prescription order is reviewed by the pharmacist for dispensing, the pharmacist shall review the medication profile record of the patient for the previously dispensed medication history and shall determine whether the prescription order presented should be dispensed.

(5) Medication profile records, if used as the only documentation of renewal dispensing, shall be maintained for a period of not less than 5 years following the date of the last entry. If the profile records are not used as the only documentation of renewal dispensing they shall be maintained for a period of not less than 1 year from the date of the last entry.

History: Cr. Register, January, 1989, No. 397, eff. 2–1–89; renum. fmm Phar 7.08. Register, **August,** 1991, No. 428, eff. 9-1–91; **am.** (1), Register, December, 1998. No. 5 16, eff. 1–1–99.

Phar 7.08 Prescription orders transmitted electronically, (1) Except as provided in **s.** 453.068 (1) (c) 4., Stats., and as otherwise prohibited by law, prescription orders may be accepted and dispensed if they have been transmitted electronically from a practitioner or his or her designated agent to a pharmacy via computer modem or other similar electronic device. Prescription orders transmitted by facsimile machine are not considered electronic prescription orders; but rather, written prescription orders.

Note: Prescription orders for schedule II controlled substances may not be transmitted electronically except as emergency orders, subject to the same requirements for oral emergency orders for schedule II controlled substances. See **s.** 961.38 **(Ir)** and (2), Stats., and s. Phar 8.09.

(2) A pharmacist may dispense a prescription pursuant to a prescription order transmitted electronically, if the pharmacist assures the prescription order does all **of** the following:

(a) Was sent only to the pharmacy of the patient's choice and only at the option of the patient, with no intervening person or third party having access to the prescription order other than to forward it to the pharmacy.

(b) Identifies the individual sender's name and telephone number for oral confirmation, the time and date of transmission, and the pharmacy intended to receive the transmission.

(c) Is designated "electronically transmitted prescription", or with similar words or abbreviations to that effect.

(d) Contains all other information that is required in a prescription order.

(3) The prescribing practitioner's electronic signature, or other secure method of validation shall be provided with a prescription order electronically transmitted via computer modem or other similar electronic device.

(4) Any visual or electronic document received in connection with an electronically transmitted prescription order shall be accessible only within the professional service area of the pharmacy to protect patient confidentiality and assure security.

(5) A pharmacist who receives a prescription order electronically shall ensure the security, integrity and confidentiality of the prescription order and any information contained in the order. To maintain the confidentiality of patient records, the electronic system shall have adequate security and system safeguards designed to prevent and detect unauthorized access, modification, or manipulation of patient records. Once the prescription has been dispensed, any alterations in prescription order drug data shall be documented including the identification of the pharmacist responsible for the alteration.

(6) Access to the electronic mail system for the receipt of prescription orders electronically may only be acquired by use of a password or passwords, known only to individuals authorized to access the system.

(7) A pharmacist may not use any electronic device to circumvent his or her responsibilities with regard to documenting, authenticating and verifying prescription orders **or** in order to circumvent other pharmacy laws.

History: Cr. Register, November, 1999, No. 527, eff. 12–1–99.

Phar 7.09 Automated dispensing systems. (1) In this section:

(a) "Automated dispensing system" means a mechanical system that perform operations or activities, other than compounding or administration, relative to the storage, packaging, dispensing or distribution of medications, and which collects, controls, and maintains all transaction information.

(b) "Inpatient health care facility" means any hospital, nursing home, county home, county mental hospital, or tuberculosis sanitorium, but docs not include community–based rcsidcntial facilities.

(2) An automated dispensing system may be used in a community pharmacy, as provided in this section.

(3) An automated dispensing system may be used as provided in this section by an institutional pharmacy serving an inpatient health care facility, that has an established program of receiving prescription orders, and dispensing and returning prescription medications consistent with accepted inpatient institutional drug distribution systems. An automated dispensing system used by an institutional pharmacy shall only be located in that institutional pharmacy or within the inpatient health care facility.

(4) The managing pharmacist of a community pharmacy or an institutional pharmacy is responsible for all of the following:

(a) Assuring that the automated dispensing system is in good working order and accurately dispenses the correct strength, dosage form, and quantity of the drug prescribed and complying with the recordkeeping and security safeguards pursuant to sub. (5).

(b) Implementing an ongoing quality assurance program that monitors performance of the automated dispensing system, which is evidenced by written policies and procedures.

(c) Providing the board with prior written notice of the installation or removal of an automated dispensing system. The notice provided shall include, but is not limited to the:

1. Name and address of the pharmacy.

2. Initial location of the automated dispensing system. The automated dispensing system may thereafter be relocated within the pharmacy or inpatient health care facility without providing subsequent notification to the board.

3. Identification of the managing pharmacist.

(d) Assigning, discontinuing or changing personnel access to the system.

(e) Assuring that access to the medications comply with state and federal laws.

(f) Assuring that the automated dispensing system is stocked accurately and in accordance with established written policies and procedures.

(5) An automated dispensing system shall comply with the following provisions:

(a) A pharmacy shall maintain on–site the following documentation relating to an automated dispensing system:

1. Name and address of the pharmacy or inpatient health care facility where the system is being used.

2. The system manufacturer's name, model and senal number.

3. Description of how the system is used.

4. Written quality assurance procedures to determine continued appropriate use of the system.

5. Except as required pursuant to par. (b), written policies and procedures for system operation, safety, security, accuracy, access and malfunction.

(b) All written policies and procedures shall be maintained in the pharmacy responsible for the automated dispensing system.

(c) An automated dispensing system shall have adequate security systems and procedures, evidenced by written policies and procedures to prevent unauthorized access to maintain patient confidentiality and to comply with federal and state laws.

(d) Rccords and data kept by the automated dispensing system shall meet the following requirements:

1. All events involving the contents of the automated dispensing systems must be recorded electronically.

2. Rccords shall be maintained by the pharmacy and be available to the board. Records shall include:

a. The time and location of the system accessed.

b. Identification of the individual accessing the system.

c. Type of transaction.

d. Name, strength, dosage form and quantity of the drug accessed.

e. Name of the patient for whom the drug was ordered.

f. Such additional information as the managing pharmacist may deem necessary.

(e) The stocking of all medications in the automated dispensing system shall be accomplished by qualified personnel under no less than the general supervision of a licensed pharmacist; except that when an automated dispensing system is located within a pharmacy the supervision must be direct.

(f) A record of medications stocked into an automated dispensing system shall be maintained for 5 years and shall include identification of the person stocking and pharmacist checking for accuracy.

(g) All containers of medications stored in the automated dispensing system shall be packaged and labeled in accordance with state and federal law.

(h) All aspects of handling controlled substances shall meet the requirements of all state and federal law.

(i) The automated dispensing system shall provide a mechanism for securing and accounting for medications removed from and subsequently returned to the automated dispensing system, in accordance with state and federal law.

(j) The automated dispensing system shall provide a mechanism for securing and accounting for medication returned to the system and accounting for wasted medications in accordance with state and federal law.

History: Cr. Register, October, 2000, **No. 538,** eff. 11–1–00.

Phar 7.10 Administration of drug products and devices other than vaccines. A pharmacist may administer a drug product, as defined in s. 450.01 (11), Stats., or device, as defined in s. 450.01 (6), Stats., in the course of teaching a patient self–administration techniques except a pharmacist may not administer by injection a prescribed drug product or device unless he or she satisfies each of the following:

(1) The pharmacist has successfully completed 12 hours in a course of study and training, approved by the American council on pharmaceutical education or the board, in injection techniques, emergency procedures and record keeping.

(2) The pharmacist has in effect liability insurance against loss, expense and liability resulting from errors, omissions or neglect in the administration by injection of prescribed drug products or devices in an amount that is not less than $1,000,000 for each occurrence and $2,000,000 for all occurrences in any one policy year. The pharmacist shall maintain proof that he or she satisfies this requirement and, upon request, shall provide copies of such proof to the department or board.

(3) The pharmacist has written procedures regarding the administration by injection of a prescribed drug product or device in the course of teaching self–administration techniques to a patient.

Note: To administer **a** vaccine a pharmacist must meet the requirements **in** s. 450.035, Stats.

History: Cr. Register, December, **1999.** No. 528, eff. 1–1–00.

Chapter Phar 8

REQUIREMENTS FOR CONTROLLED SUBSTANCES

Phar 8.01 Scope. Procedures governing the manufacture, distribution and dispensing of controlled substances pursuant to ch. 961, Stats., are set forth generally by that chapter and specifically by sections of this chapter and chs. Phar 12 and 13.

History: Cr. Register, January, 1983, No. 325. eff. 2–1–83; am. Register, August, 1991, No. 428. eff. 9–1–91; am. Register, December, 1998, No. 516, eff. 1–1–99.

Phar 8.02 Records. (1) Any pharmacy, practitioner, or other federal drug enforcement administration registrant, as referenced in ch. 961, Stats., shall maintain complete and accurate records of each controlled substance received, manufactured, distributed, dispensed or disposed of in any other manner.

(2) Records required by the federal controlled substances act and ch. 961, Stats., shall be maintained at the location where the drug is received, manufactured, distributed or dispensed, and be available for inspection by authorized persons for at least 5 years from the date of such record. Financial and shipping records such as invoices and packing slips, but not executed order forms, may be kept at a central location. **A** complete and accurate biennial physical inventory of all schedule II, III, IV and V controlled substances pursuant to ss. 961.16, 961.18, 961.20 and 961.22, Stats., and ch. CSB 2 on hand shall be made in conformance with all applicable federal and state laws.

(3) Required records shall be maintained as follows:

(a) Records of schedule II controlled substances, other than prescription orders, shall be maintained separately from all other records.

(b) Records of schedule III, IV and V controlled substances shall he maintained either separately or in such form that the information required is readily retrievable from the registrant's ordinary records.

(c) The official drug enforcement administration order forms, DEA form 222, used in the procurement and distribution of schedule II substances shall be maintained at the locations from which the drug was distributed and where it is received.

(d) Any person authorized to manufacture, distribute or dispense controlled substances shall maintain complete and accurate records with the following information:

1. The name of the substance.

2. The dosage form, strength and quantity of the substance.

3. The quantity and date of distribution as well as the name, address and DEA registration number of the person to whom distributed.

4. The number of units and date of receipt as well as the name, address and DEA registration number of the person from whom received.

5. The name and address of the person for whom dispensed, date of dispensing, quantity dispensed and name or initials of the individual who dispensed the substance.

(e) Records for dispensed schedule V substances shall be maintained as follows:

1. If a schedule V drug is dispensed pursuant to the prescription order of a practitioner, the prescription shall be labeled properly and the order filed in accordance with the requirements for schedule III and IV orders.

2. If a schedule V drug is dispensed other than pursuant to a prescription order, the dispenser shall make the record required by s. 961.23, Stats., in a bound controlled substance V register at the time of the transaction.

(f) Any pharmacy, practitioner or other drug enforcement administration registrant authorized to possess controlled substances shall notify the regional office of the drug enforcement administration, the local police, and the pharmacy examining board of the theft or loss of any controlled substances upon discovery of such theft or loss.

Note: The Drug Enforcement Administration regional office is at 1800 Dirksen Federal Building, 219 S. Dearbom, Chicago, Illinois 60604.

History: Cr. Register, January, 1983, No. 325, eff. 2–1–83; am. (3) **(f), r.** (4) (a) and (b), Register, August, 1991, No. 428, eff. 9–1–91; am. **(1),** (2) and (3) (e) 2., Register, December, 1998, No. 516, eff. 1–1–99.

Phar 8.03 Filing prescription orders. (1) All controlled substance prescription orders shall be maintained on file, in chronological order, for a period of at least 5 years. The orders shall be readily accessible to enforcement personnel authorized by s. 961.51, Stats.

(2) Schedule II prescription orders may be filed separately from all other orders or they may be filed with those for schedule III, IV and V drugs provided **all** orders in the file for schedule III, IV and V drugs are stamped in red ink with the letter "C" one inch in height, in the lower right hand comer of the order. Under no circumstances may schedule II orders be filed together with those for non-controlled drugs.

(3) Schedule III, IV and V prescription orders may be filed with those for non–controlled drugs provided that orders for schedule III, IV and V drugs are stamped in red ink with the letter "C" one inch in height in the lower right hand comer of the order or orders for schedule III, IV and V substances may be filed separately. However, if a pharmacy employs an automated data processing system or other electronic recordkeeping system for prescription orders which permits identification by prescription order number and retrieval of original documents by prescriber's name, patient's name, drug dispensed, and date filled, then the requirement to mark the hard copy prescription order with a red "C" is waived.

History: Cr. Register, January, 1983, No. 325, eff. 2–1-83; **am.** (2) and (3), Register, August, 1991, No. 428, eff. 9–1–91; am. **(1) and** (3), Register, December, 1998, No. 516, eff. 1–1–99.

Phar 8.04 Purpose of issue of prescription order. (1) Prescription orders for controlled substances shall be issued for a legitimate medical purpose by individual practitioners acting in the usual course of professional practice. Responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who dispenses the prescription. An order purporting to be a prescription order not issued in the usual course of professional treatment or in legitimate and authorized research is not a prescription order within the meaning and intent of ss. 450.01 (21) and 961.38, Stats. The person knowingly dis-

pensing pursuant to such a purported order, as well as the person issuing it, shall be subject to the penalties provided for violation of the provision of law relating to controlled substances.

(2) A prescription order issued by a practitioner to obtain controlled substances for the purpose of general dispensing or administration to patients by the practitioner is not valid.

History: Cr. Register, **January,** 1983. No. 325, eff. 2–1–83; am. Register, August, 1991, No. 428, eff. 94–91; am. (1), Register, December, 1998, No. 516, eff. 1–1–99.

Phar 8.05 Dispensing. (1) All controlled substance prescription orders shall be dated as of, and signed on, the day issued and shall contain the full name and address of the patient, the drug name, strength, dosage form, quantity prescribed, directions for use and the name, address and registration number of the practitioncr. Prescription orders shall be written with ink or indelible pencil or be typewritten and shall be signed by the practitioner. Orders for controlled substances may be issued only by individual practitioners who are authorized to prescribe controlled substances by the jurisdiction in which he or she is licensed to practice and registered or exempt from registration under the federal controlled substances act.

(2) A pharmacist may dispense a controlled substance listed in schedule II, III or IV only pursuant to a prescription order issued by an individual practitioner. The order shall be initialed and dated by the dispensing pharmacist as of the date the prescription is dispensed. If the person accepting the medication pursuant to any prescription order for a schedule II controlled substance, specified in **s.** 961.16, Stats., is not personally known to the pharmacist, there shall be written in ink, on the reverse side, the printed name, signature and address of the person.

(3) An individual practitioner may dispense directly a controlled substance listed in schedule II, III or IV provided that the prescription container is labeled and records. are maintained in accordance with the requirements of this code.

(4) A prescription containing a controlled substance listed in schedule II may be dispensed only pursuant to a written order signed by the prescribing individual practitioner. except in emergency situations. A prescription for a controlled substance listed in schedule II may not be dispensed more than 60 days after the date of issue on the prescription order.

(7) A prescription order for a controlled substancc may not be dispensed unless the prescription order contains all of the information required in sub. (1). For any controlled substance prescription order, a pharmacist may not add, modify or clarify the patient's name, the controlled substance prescribed, except for generic substitution as permitted by law, and the prescribing practitioner's signature. After consultation with the prescribing practitioner, a pharmacist may add, modify or clarify the strength, dosage form, quantity prescribed, date of issuance and directions for use for a schedule II controlled substance prescription order. For a schedule II controlled substance prescription order, a pharmacist may add, modify or clarify the registration number of the practitioner, and the address of the practitioner and the patient if that information is verifiable and retrievable from information maintained by the pharmacist or is obtained through consultation with the practitioner. A pharmacist may add, modify or clarify any information allowed in this subsection missing from a prescription order for a schedule 111, IV or V controlled substancc that is verifiable and retrievable from information maintained by the pharmacist or that is obtained through consultation with a practitioner. A patient may only provide information to a pharmacist to add, modify or clarify the patient's address. The prescription order shall be initialed and dated by the pharmacist and shall indicate the addition, modification or clarification of information and the manner by which the pharmacist obtained that information.

History: Cr. Register, **January,** 1983, No. 325, eff. 2–1–83; am. (1), (2), (3) and (51, cr. (6), Register, August, 1991, No. 428, eff. 9–1–91: cr. (7), Register. January. 1996. No. 481, eff. 2–1–96; am. (4). Register. February, 1996, No. 482. eff. 3–1–96; am. (2), Register, December, 1998. No. 516, eff. 1–1–99; am. (1) and (7), r. (6). Register, February, 2001. No. 542, eff. 3–1–01; **CR 01–154: am. (4), r. (5), Register 2002 No. 559, eff. 8–1-02.**

Phar 8.06 Renewing prescriptions. (1) No prescription containing a schedule II substance may be renewed.

(2) The prescribing practitioner may authorize renewals of schedule III or IV controlled substances on the original prescription order or through an electronic or oral renewal authorization transmitted to the pharmacist. The following conditions must be met:

(a) The pharmacist obtaining the electronic or oral authorization shall note on the prescription order, medication profile record or readily retrievable and uniformly maintained document the following information:

1. Date authorization is received.
2. Quantity of drug authorized.
3. Number of renewals.
4. Identification of practitioner authorizing the renewals if different from the original prescriber.
5. Identification of the pharmacist who received the authorization.

(b) The quantity of each renewal authorized is equal to or less than the quantity authorized for the initial dispensing of the original prescription.

(3) No prescription containing a controlled substance listed in schedule III or IV may be dispensed or renewed more than 6 months after the date on which the prescription order was issued and no prescription authorized to be renewed may be renewed more than 5 times.

(4) A prescription containing a drug listed in schedule V may be renewed only as expressly authorized by the practitioner.

History: Cr. Register, January, 1983, No. 325, **eff.** 2–1–83; renum. (2) and (3) to he (3) and (4) **and am.** (3), cr. (2), Register, August, 1991, No. 428, **eff.** 9–1–91; **am.** (2) (intro.) **and** (a) (intro.), Register, November, 1999, No. 527, **eff.** 12–1–99.

Phar 8.07 Partial dispensing. (1) A pharmacist may partially dispense a prescription containing a controlled substance listed in schedule III, IV and V.

(2) The partial dispensing of a prescription containing a controlled substance listed in schedule II is permissible, if the pharmacist is unable to supply the full quantity called for in a written or emergency electronic or oral prescription order, and the pharmacist makes a notation of the quantity supplied on the face of the written prescription order or written record of the emergency electronic or oral prescription order. The remaining portion of the prescription may be dispensed within 72 hours of the first partial dispensing. If the remaining portion is not dispensed within the 72 hour period, the pharmacist shall so notify the prescribing individual practitioner. No further quantity may be supplied beyond the 72 hours without a new prescription order.

(3) Prescription orders for schedule II controlled substances written for patients in long term care facilities (LTCF) or for patients with a medical diagnosis documenting a terminal illness may be dispensed in partial quantities to include individual dosage units. The prescribing practitioner may document a terminal illness by writing upon the face of the prescription order the phrase "terminal illness" or words of similar meaning. If there is any question whether a patient may be classified as having a terminal illness, the pharmacist shall contact the prescribing practitioner prior to partially dispensing the prescription. Documentation of a terminal illness, whether substantiated by the presence of an appropriate phrase written upon the face of the prescription order or through pharmacist contact with the prescribing practitioner, shall be placed within the individual medication profile record maintained under **s.** Phar 7.07. The pharmacist shall record on the prescription order whether the patient is "terminally ill" or an "LTCF patient." A prescription order that is partially dispensed and does not contain the notation "terminally ill" or "LTCF

patient" shall be deemed to have been dispensed in violation of this section. For each partial dispensing, the dispensing pharmacist shall record on the back of the prescription order or on another appropriate record, uniformly maintained and readily retrievable, the date of the partial dispensing, quantity dispensed, remaining quantity authorized to be dispensed and the identification of the dispensing pharmacist. Subsequent partial dispensing is not permitted under this section if the patient becomes deceased, or is no longer diagnosed as terminally ill, or no longer resides within an LTCF. The total quantity of a schedule II controlled substance dispensed by partial dispensing may not exceed the total quantity prescribed. Prescription orders for schedule II controlled substances for patients in an LTCF or patients with a medical diagnosis documenting a terminal illness shall be valid for a period not to exceed 60 days from the issue date unless terminated earlier by the discontinuance of medication.

(4) Information pertaining to current prescription orders for schedule II controlled substances for patients in an LTCF or for patients with a medical diagnosis documenting a terminal illness may be maintained in a computerized system if the system has the capability to permit:

(a) Display or printout of: the original prescription order designation; date of issue; identification of prescribing practitioner; identification of patient; name and address of the LTCF or name and address of the hospital or residence of the patient; identification of medication authorized, including dosage form, strength and quantity; listing of partial quantities that have been dispensed under each prescription order and the information required in sub. (3).

(b) Immediate (real time) updating of the prescription order record each time there is partial dispensing of the prescription.

(c) Retrieval of partially dispensed schedule II prescription information identical to that required by s. Phar 7.05 (2) for all prescription renewal information.

History: Cr. Register, **January,** 1983, No. 325, eff. 2–1–83; r. and recr. Register, August, 1991, No. 428, eff. 9–1–91; am. (3), (4) (intro.) and (a). r. (5), Register, September, 1994, No. 465. eff. 10–1–94; am. (2), Register, November, 1999, No. 527, eff. 12–1–99.

Phar 8.08 Labeling prescriptions. (1) The pharmacist dispensing a prescription containing a controlled substance shall affix to the immediate container a label showing the date of dispensing; the pharmacy name and address; serial number of the prescription; full name of the patient; name of the prescribing practitioner; directions for use; and cautionary statements, contained in the prescription order or required by law.

(2) Practitioners who personally dispense any controlled substance to patients in the course of their professional practice other than by prescribing or administering shall conform to ch. Med 17, standards for dispensing drugs.

History: Cr Register, **January,** 1983, No. 325. **eff** 2–1–83; am Register, August, 1991, No. 428, eff. 9–1–91.

Phar 8.09 Emergency dispensing. (1) For the purpose of authorizing an electronic or oral prescription order for a schedule II controlled substance, the term "emergency" means those situations in which the prescribing practitioner determines that:

(a) Immediate administration of the controlled substance is necessary for proper treatment of the patient.

(b) No appropriate alternative treatment is available, including the administration of a drug which is not a schedule II controlled substance.

(c) It is not reasonably possible for the prescribing practitioner to provide a written prescription order to be presented to the pharmacist prior to dispensing.

(2) In an emergency a pharmacist may dispense a controlled substance listed in schedule II upon receiving electronic or oral authorization of a practitioner if:

(a) The quantity prescribed and dispensed is limited to the amount adequate to treat the patient during the emergency period.

(b) The prescription order is immediately reduced to writing by the pharmacist and contains all information required in s. Phar 8.05, except for the signature of the practitioner.

(3) If the practitioner is not known to the pharmacist, the pharmacist shall make a reasonable effort to determine that the electronic or oral authorization came from an authorized practitioner, which may include a call back to the prescribing practitioner using the practitioner's phone number as listed in the telephone directory and other good faith efforts to insure the practitioner's identity.

(4) Within 7 days after authorizing an emergency electronic or oral prescription order, the practitioner shall cause a written order for the emergency quantity prescribed to be delivered to the dispensing pharmacist. In addition to conforming to the requirements of s. Phar 8.05, the order shall contain on its face "authorization for emergency dispensing" and the date of the electronic or oral order. The written order may be delivered to the pharmacist in person or by mail, but if delivered by mail it shall be postmarked within the 7 day period. Upon receipt, the dispensing pharmacist shall attach this prescription order to the electronic or oral emergency order reduced to writing under sub. (2) (b). The pharmacist shall notify the board or department of regulation and licensing if the practitioner fails to deliver the written order. Failure of the pharmacist to provide notification shall void the authority conferred by this section to dispense without a written order of a practitioner.

History: Cr. Register, January, 1983, No. 325, eff. 2–1–83; am. Register, August. 1991, No. 428, eff. 9–1–91; **am.** (4), Register, December, 1998. No. 516, eff. I–I–9% am. (1) (intro.), (2) (intro.), (3) and (4). Register, November, 1999, No. 527, eff. 12–1–99.

Phar 8.10 Disclosure of suspicious orders of controlled substances. Manufacturers and distributors of controlled substances shall disclose suspicious orders of controlled substances. Suspicious orders include, without limitation because of enumeration, orders of unusual size, orders deviating substantially from a normal pattern and orders of unusual frequency. The licensee shall notify the regional office of the DEA and the board of all suspicious orders.

History: Cr. Register, August, 1991, No 428, eff. 9–1–91.

Phar 8.11 Controlled substances in emergency kits for long term care facilities. Long term care facilities which are not registered with the **DEA** shall meet all of the following requirements regarding emergency kits containing controlled substances:

(1) The source of supply must be a DEA registered hospital, pharmacy or practitioner.

(2) The pharmaceutical services committee of the facility shall establish security safeguards for each emergency kit stored in the LTCF which shall include the designation of individuals who may have access to the emergency kits and a specific limitation of the type and quantity of controlled substances permitted to be placed in each emergency kit.

(3) A pharmacist shall be responsible for proper control and accountability for such emergency kits within the LTCF which includes the requirement that the LTCF and the providing DEA registered hospital, pharmacy or practitioner maintain complete and accurate records of the controlled substances placed in the emergency kits, the disposition of those controlled substances, plus the requirement to take at least monthly physical inventories.

(4) The pharmaceutical services committee will establish the emergency medical conditions under which the controlled substances may be administered to patients in the LTCF which shall include the requirement that medication be administered by authorized personnel only as expressly authorized by an individ-

ual **DEA** registered practitioner and in compliance with all applicable federal and state laws.

(5) Noncompliance with this rule may result in revocation, denial or suspension of the privilege of having or placing emergency kits, containing controlled substances. in LTCF.

History: Cr. Register, August, 1991, No. 428, eff. 9–1–91.

Phar 8.12 Prescription orders transmitted by facsimile machine. (1) PRESCRIPTION DRUGS OTHER THAN SCHEDULE II CONTROLLED SUBSTANCES. **A** pharmacist may dispense a prescription drug, other than a schedule II controlled substance, pursuant to a prescription order transmitted by a facsimile machine from the practitioner or the practitioner's agent to the dispensing pharmacy if all of the following conditions are met:

(a) The transmitted facsimile prescription order shall contain all of the information required for a valid written prescription order. The order shall also contain the time and date of the transmission, as well as the telephone number and name of the transmitter.

(b) Unless the facsimile paper is non–fading, the facsimile prescription order received shall be duplicated by copy machine or other similar device and the copy must be physically attached to the order received.

(2) SCHEDULE II CONTROLLED SUBSTANCES. **A** pharmacist may not dispense a schedule II controlled substance pursuant to a prescription order transmitted by a facsimile machine unless all of the conditions stated in sub. (1) are satisfied, and any of the following conditions are met:

(a) The prescription order is written for a schedule II controlled substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion, and is transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile.

(b) The prescription order is written for a schedule II controlled substance for a patient in a long term care facility, and is transmitted by the practitioner or the practitioner's agent **to** the dispensing pharmacy by facsimile.

(c) The prescription order is written for a schedule II controlled substance for a patient enrolled in a hospice certified by medicare under Title XVIII or licensed by this state, and is transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile.

(3) PRESCRIPTION ORDERS TRANSMITTED BY FACSIMILE CONSIDERED WRITTEN ORDERS. For all purposes under chs. 450 and 961, Stats., and the rules of the board, a prescription order transmitted by facsimile machine shall be considered the original written prescription order.

History: Cr. Register, December, 1998, No. **516,** eff. 1–1–99.

Chapter Phar 9

PHARMACEUTICAL SERVICES REQUIREMENTS IN NURSING HOMES

Phar 9.01 Pharmaceutical services requirements in nursing homes. Requirements for pharmaceutical services provided in nursing homes are specified in ch. HFS 132.

History: Cr. Register, January, 1983, No. 325, eff. 2–1–83; correction made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1994, No. 462; correction made under s. 13.93 (2m) (b) 7., Stats., Register, November, 1999, No. 527.

Chapter Phar 10

STANDARDS OF PROFESSIONAL CONDUCT

Phar 10.01 Authority. The rules in this chapter are adopted pursuant to the authority in **ss.** 15.08, 227.11 and 450.02, Stats.

History: Cr. Register, January, **1980,** No. **289,** eff. **2-1-80;** renum. from Phar **5.01,** Register, January, **1983,** No. **325,** eff. **2-1-83;** correction made under s. **13.93 (2m)** (b) **7.,** Stats.. Register, July, **1993,** No. **451.**

Phar 10.02 Definitions. In this chapter:

(1) "Dispense" has the meaning given in **s.** 450.01 (7), Stats.

(2) "Drug" has the meaning given in s. 450.01 (10), Stats.

(3) "Patient" has the meaning given in **s.** 450.01 (14), Stats.

History: Cr. Register. January, **1980,** No. **289.** eff. **2-1-80;** renum. from Phar **5.02** and r. **(4),** Register. January, **1983,** No. **325,** eff. **2-1-83; am.** (1), **(2)** and **(3),** Register, December, **1998, No. 516,** eff. **1-1-99.**

Phar 10.03 Unprofessional conduct. The following, without limitation because of enumeration, are violations of standards of professional conduct and constitute unprofessional conduct in addition to those grounds specified under **s.** 450.10 (1), Stats.:

(1) Administering, dispensing, supplying or obtaining a drug other than in legitimate practice, or as prohibited by law;

(2) Engaging in any pharmacy practice which constitutes a danger to the health, welfare, or safety of patient or public, including but not limited to, practicing in a manner which substantially departs from the standard of care ordinarily exercised by a pharmacist which harmed or could have harmed a patient;

(3) Dispensing a drug which the pharmacist should have known would harm the patient for whom the medication was prescribed;

(4) Dispensing or causing to be dispensed a drug which is outdated or contaminated or known by the pharmacist to be unsafe for consumption;

(5) Falsifying patient records;

(6) Disclosing to the public information concerning a patient without the consent of the patient unless the information is requested by the pharmacy examining board or the department of regulation and licensing or unless release is otherwise authorized by law;

(7) Failing to report to the pharmacy examining board any pharmacy practice which constitutes a danger to the health, safety or welfare of patient or public;

(7m) Failing to report to the board information that reasonably suggests there is a probability that a prescription drug or device dispensed by a pharmacist has caused or contributed to the substantial bodily injury or death of a customer or patient.

(8) Providing false information to the pharmacy examining board or its agent;

(9) Refusing to render professional services to a person because of race, color, sex, religion, or age;

(10) Aiding or abetting the unlicensed practice of pharmacy;

(11) Advertising in a manner which is false, deceptive or misleading;

(12) Dispensing sample drug products for any financial consideration;

(13) Exercising undue influence on or taking unfair advantage of a patient in the promotion or sale of services, drugs or other products for the financial gain of the pharmacist or a third party;

(14) Participating in rebate or fee–splitting arrangements with health practitioners or with health care facilities;

(15) Furnishing a prescriber with any prescription order blanks imprinted with the name of a specific pharmacist or pharmacy:

(16) Using secret formula or code in connection with prescription orders;

(17) Having a pharmacist license revoked or suspended in another state or United Statesjurisdiction or having been subject to other disciplinary action by the licensing authority thereof;

(18) Violating or attempting to violate any formal disciplinary order of the board.

(19) Practicing without a current license.

History: Cr. Register, January, **1980,** No. **289,** eff. **2-1-80; renum.** from Phar **5.03,** Register. January, **1983,** No. **325,** eff. **2-1-83;** am. (intro.), r. [1], **(2), (7), (13)** and (22), renum. (3) to (6), (8) to (12), (14) to (21) to be (1) to (17), Register, August, 1991, **No. 428,** eff. **9-1-91;** am. (17), cr. **(18).** Register, July, **1993,** No. **451, eff. 8-1-93;** cr. (7m) and **(19),** Register, December, **1998,** No. **516, eff. 1-1-99.**

Chapter Phar 11

PROCEDURE FOR HEARINGS

Phar 11.01 Procedure for disciplinary proceedings.

Procedures for disciplinary proceedings before the board are set forth in ch. RL 2. Wis. Adm. Code.

History: Cr. **Register.** January. **1983.** No. **325,** eff. **2–1–83.**

Chapter Phar 12

MANUFACTURER REQUIREMENTS

Phar 12.01 Authority. The rules in this chapter are adopted under authority in ss. 15.08 (5) (b), 227.11 (2) (a) and 450.07 (4), Stats.

History: Cr. Register, August, 1987, No. 380, eff. 9–1–87.

Phar 12.02 Definitions. In this chapter:

(1) "Device" has the meaning set forth in s. 450.01 (6), Stats.

(2) "Drug" has the meaning set forth in s. 450.01 (10), Stats.

(3) "Establishment" means a place of business under one management at one general physical location.

(4) "Manufacturer" means a person licensed by the board under this chapter.

(5) "Manufacturing" has the meaning set forth in s. 450.01 (13), Stats.

(6) "Prescription drug" has the meaning set forth in s. 450.01 (20), Stats.

History: Cr. Register, August, 1987, No. 380, eff. 9-1-87; am. (3), Register, August, 1991, No. 428, eff. Y-1-91.

Phar 12.03 License; application. (1) No person may engage in the manufacturing of any drug or device in this state unless a license is granted to the person by the board under this chapter.

(2) To obtain a license a person shall do all of the following:

(a) Submit an application on a form provided by the board.

(b) Pay the fee specified in s. 440.05 (I), Stats.

(c) Meet the inspection requirement under s. Phar 12.04.

(d) Register with the food and drug administration and comply with all applicable requirements of 21 CFR 200, 201, 202, 207, 210 and 211.

(e) If applicable, register with the drug enforcement administration and comply with all appropriate requirements of 21 CFR 1301, 1302, 1303, 1304, 1305, 1307, 1311 and 1312.

Note: An application form may be obtained from the board office, 1400 East Washington Avenue. Madison, Wisconsin 53702. Copies of federal applications, laws and regulations may be obtained from the Food and Drug Administration, 5600 Fischers Lane, Rockville, Maryland 20857 and the Drug Enforcement Administration, 500 Dirksen Federal Building, 219 Dearborn. Chicago, Illinois 60604.

(3) A manufacturer license may not be transferred from one establishment to another nor from one person to another. Each establishment requires a separate license.

(4) If the license is denied, the applicant may request a hearing before the board on the denial.

(5) The board shall act on the application for a license within 60 business days after receiving the completed application, as provided in s. RL 4.03.

History: Cr. Register, August, 1987, No. 380. eff. 9-1-87; am. (2) (intro.), (a). (b), (c), (d) and (5), Register, December, 1998, No. 516, eff. 1-1-99; CR 00–157: am. (2) (d) and (e) Register May 2002 No. 557, eff. 6–1–02.

Phar 12.04 Inspections. Before a license is granted, an inspection of the establishment shall be conducted by the board or its representative to determine if the location meets the standards in 21 USC 351 and 352 (1984) and 21 CFR 210 and 211 (1985).

History: Cr. Register, August, 1987, No. 380, eff. 9–1–87.

Phar 12.05 Compliance. Failure to comply with all applicable federal and state laws and regulations shall be subject to disciplinary action by the board under s. 450.10, Stats.

History: Cr. Register, August, 1987, No. 380, eff 9–1–87.

Chapter Phar 13

DISTRIBUTOR REQUIREMENTS

Note: Chapter Phar 13 as it existed on July 31, 1992 was repealed and a new chapter Phar 13 was created effective August 1, 1992

Phar 13.01 Authority. The rules in this chapter are adopted under authority in ss. 15.08 (5) (b), 227.11 (2) (a), 450.02 (3) (a) and 450.07 (4), Stats.

History: Cr. Register, July. 1992, No 439, eff. 8–1–92.

Phar 13.02 Definitions. In this chapter:

(1) "Blood" means whole blood collected from a single donor and processed either for transfusion or further manufacturing.

(2) "Blood component" means that part of blood separated by physical or mechanical means.

(3) "Controlled substance" has the meaning set forth in s. 961.01 (4), Stats.

(4) "Device" has the meaning set forth in s. 450.01 (6), Stats.

(5) "Distribute" has the meaning set forth in s. 450.01 (8), stats.

(6) "Distributor" means any person engaged in wholesale distribution of prescription drugs or devices, including, but not limited to, manufacturers; repackers; own–label distributors; private–label distributors; jobbers; brokers; warehouses, including manufacturers' and distributors' warehouses. chain drug warehouses, and wholesale drug warehouses; independent wholesale drug traders; and pharmacies that conduct wholesale distributions not coincident to the compounding, packaging, labeling and dispensing of prescription drugs and devices.

(7) "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

(8) "Facility" means a location at which wholesale distribution operations are conducted.

(9) "Manufacturer" means any person who is engaged in manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling of a prescription drug or device.

(10) "Prescription drug" has the meaning set forth in s. 450.01 (20), Stats.

(11) "Wholesale distribution" means distribution of prescription drugs or devices to persons other than a consumer or patient. The term does not include:

(a) Intracompany sales, which include any transaction or transfer between any division, subsidiary, parent, affiliated or related company under the common ownership and control of a corporate entity.

(b) **A** pharmacy's coincident distribution of a drug or device, or the sale, purchase, or trade of a drug or device, or an offer to sell, purchase, or trade a drug or device for emergency medical reasons, In this paragraph, "emergency medical reasons" include transfers of prescription drugs or devices by a pharmacy to another pharmacy or other licensed health care entity to alleviate a temporary shortage.

(c) The sale, purchase, or trade of a drug or device, an offer to sell, purchase, or trade a drug or device, or the dispensing of a drug or device pursuant to a prescription order.

(d) The lawful distribution of drug samples by manufacturers' representatives or distributors' representatives.

(e) The sale, purchase, or trade of blood and blood components intended for transfusion or further manufacture.

(f) Distributions to a practitioner for the purpose of general dispensing by the practitioner to his or her patients if all of the following apply:

1. The total number of dosage units of all prescription drugs distributed to practitioners by the pharmacy during each calendar year in which the pharmacy is licensed does not exceed 5% of the total number of dosage units of all prescription drugs distributed and dispensed by the pharmacy during the same calendar year.

2. The total number of dosage units of all controlled substances distributed to practitioners by the pharmacy during each calendar year in which the pharmacy is licensed does not exceed 5% of the total number of dosage units of all controlled substances distributed and dispensed by the pharmacy during the same calendar year.

History: Cr. Register, **July,** 1992, No. 439, eff. 8–1–92; cr. (11) (f), Register, Feb*ruary,* 1996, No, 482. eff. 3–1–96; **am.** (3). Register, December, 1998, No. 516, eff. 1–1–99.

Phar 13.03 License required. No person, located within or outside Wisconsin, may sell or distribute at wholesale any prescription drug or device into, out of, or within this state unless a distributor's license is granted to the person by the board under this chapter. **A** distributor's license may not be transferred from one facility to another or from one person to another. **A** person must obtain a distributor's license for each facility.

History: Cr. Register, **July,** 1992, No. 439, eff. 8–1–92.

Phar 13.04 License; application. To obtain a distributor's license a person shall provide the following information to the board:

(1) The name, full business address, and telephone number of the applicant;

(2) All trade or business names to be used by the applicant;

(3) Addresses, telephone numbers, and the names of contact persons for the facility to be used by the applicant for the storage, handling, and distribution of prescription drugs or devices;

(4) Whether the applicant is a partnership, corporation, sole proprietorship or person;

(5) If a partnership, the full name of each partner, and the name of the partnership;

(6) If a corporation, the full name and title of each corporate officer and director, the state of incorporation, and the name of the parent company, if any;

(7) If a sole proprietorship, the full name of the sole proprietor and the name of the business entity;

(8) If a person, the full name of the person;

(9) Any convictions of the applicant under any federal, state, or local laws relating to drug samples, wholesale or retail drug or device distribution, or distribution of controlled substances;

(10) Any felony convictions of the applicant under federal, state, or local laws, the circumstances of which are substantially related to the practice of a distributor;

(11) Any suspension or revocation by federal, state, or local government of any license currently or previously held by the applicant for the manufacture or distribution of any devices or drugs, including controlled substances;

(12) The applicant's past experience in the manufacture or distribution of prescription drugs or devices, and any controlled substances;

(13) Compliance with licensing requirements under previously granted licenses, if any; and

(14) Compliance with requirements to maintain or make available to a state licensing authority or to federal, state, or local law enforcement officials those records required to be maintained by wholesale drug or device distributors.

Note: An application form may be obtained from the board office, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

History: Cr. Register, July, 1992, No. 439, eff. 8–1–92.

Phar 13.05 License; other requirements. In addition to providing the application information, to obtain a license a person shall:

(1) Pay the fee specified in s. 440.05 (1), Stats.

(2) Pass an inspection of the facility conducted by the board or its representative to determine if the location meets standards specified in ss. Phar 13.08 to 13.11, 21 USC 351 and 352 and 21 CFR211.142 (b).

(3) Register with the drug enforcement administration, if intending to distribute controlled substances.

Note: Copies of federal applications may be obtained from the Drug Enforcement Administration, Suite 500, Dirksen Federal Building, 219 South Dearborn Street, Chicago, Illinois 60604. Copies of federal statutes and rules may be obtained from the Superintendent of Documents. Government Printing Office, Washington DC 20402–9325.

History: Cr. Register, July, 1992, No. 439, eff. 8–1–92; CR **00–157:** am. **(2)** Register May ***2002*** No. **557, eff. 6–1–02.**

Phar 13.06 License; factors considered. In determining eligibility for a distributor's license, the board shall consider the following factors:

(1) Any convictions of the applicant under any federal, state, or local laws relating to drug samples, wholesale or retail drug or device distribution, or distribution of controlled substances;

(2) Any felony convictions of the applicant under federal, state, or local laws, the circumstances of which are substantially related to the practice of a distributor;

(3) The applicant's past experience in the manufacture or distribution of prescription drugs or devices, and any controlled substances;

(4) The furnishing by the applicant of false or fraudulent material in any application made in connection with drug manufacturing or distribution;

(5) Suspension or revocation by federal, state, or local government of any license currently or previously held by the applicant for the manufachire or distribution of any devices or drugs, including controlled substances;

(6) Compliance with licensing requirements under previously granted licenses, if any;

(7) Compliance with the requirements to maintain or make available to a state licensing authority or to federal, state, or local law enforcement officials those records required to be maintained by wholesale drug or device distributors; and

(8) Any other factors or qualifications the board considers relevant to and consistent with the public health and safety.

History: Cr. Register, July, 1992, No. 439, eff. 8–1–92.

Phar 13.07 Application review. The board shall act upon an application for a license within 60 business days after receiving the completed application, as provided in s. RL 4.03. If the license is denied, the applicant may request a hearing pursuant to ch. RL 1.

History: Cr. Register, July, 1992, No. 439, eff. 8–1–92; am., Register, December, 1998, No. 516, eff. 1–1–99.

Phar 13.08 Personnel. A distributor shall employ adequate personnel with the education and experience necessary to safely and lawfully engage in the wholesale distribution of drugs and devices.

History: Cr. Register, July, 1992, No. 439, eff. 8–1–92.

Phar 13.09 Facility requirements. All facilities at which prescription drugs or devices are stored, warehoused, handled, held, offered, marketed, or displayed shall:

(1) Be of suitable size and construction to facilitate cleaning, maintenance, and proper operations;

(2) Have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security conditions;

(3) Have a quarantine area for storage of prescription drugs or devices that are outdated, damaged, deteriorated, misbranded, or adulterated, or that are in immediate or sealed secondary containers that have been opened;

(4) Be maintained in a clean and orderly condition; and

(5) Be free from infestation by insects, rodents, birds, or vermin of any kind.

History: Cr. Register, July, 1992, No. 439, eff. 8–1–92.

Phar 13.10 Security requirements. All facilities shall require that:

(1) Access from outside the premises is kept to a minimum and be well controlled;

(2) The outside perimeter of the premises is well lighted;

(3) Entry into areas where prescription drugs or devices are held is limited to authorized personnel;

(4) An alarm system is maintained to detect entry after hours; and

(5) A security system is maintained that will provide suitable protection against theft and diversion, including, when appropriate, a system that provides protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

History: Cr. Register, July, 1992, No. 439, eff. 8–1–92.

Phar 13.11 Storage requirements. (1) All prescription drugs and devices stored in a facility shall be stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such products, or with requirements in the current edition of an official compendium.

(2) If no storage requirements are established for a prescription drug or device, the product may be held at a controlled room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality, and purity are not adversely affected.

(3) Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, and/or logs shall be utilized to document proper storage of prescription drugs and devices.

(4) The recordkeeping requirements in s. Phar 13.14 shall be followed for all stored drugs and devices.

History: Cr. Register, July, 1992, No. 439. eff. 8–1–92.

Phar 13.12 Examination of materials requirements. **(1)** Upon rcccipt by a facility, each outside shipping container shall be visually examined for identity and to prevent the acceptance of contaminated prescription drugs or devices, or prescription drugs or devices that are otherwise unfit for distribution. This examination shall be adequate to reveal container damage that would suggest possible contamination or other damage to the contents.

(2) Each outgoing shipment from a facility shall be carefully inspected for idcntity of the prescription drug or dcvicc and to ensure that there is no delivery of prescription drugs or devices that have been damaged in storage or held under improper conditions.

(3) The recordkeeping requirements in s. Phar 13.14 shall be followed for all incoming and outgoing prescription drugs and devices at a facility.

History: Cr. Register, **July,** 1992, No. **439,** eff. 8–1–92.

Phar 13.13 Returned, damaged and outdated prescription drug and device requirements. (1) Prescription drugs and devices in a facility that are outdated, damaged, deteriorated, misbranded, or adulterated shall be quarantined and physically separated from other prescription drugs and devices until they are destroyed or returned to their supplier.

(2) Any prescription drugs or devices in a facility whose immediate or sealed outer or sealed secondary containers have been opened or used shall be identified as such, and shall be quarantined and physically separated from other prescription drugs and devices until they are either destroyed or returned to the supplier.

(3) If the conditions under which a prescription drug or device has been returned to a facility cast doubt on the product's safety, identity, strength, quality, or purity, then the product shall be destroyed, or returned to the supplier, unless examination, testing, or other investigation proves that the product meets appropriate standards of safety, identity, strength, quality, and purity. In determining whether the conditions under which a product has been returned cast doubt on its safety, identity, strength, quality, or purity, the distributor shall consider, among other things, the conditions under which the product has been held, stored, or shipped before or during its return and the condition of the product and its container, carton, or labeling, as a result of storage or shipping.

(4) The recordkeeping requirements in **s.** Phar 13.14 shall be followed for all outdated, damaged, deteriorated, misbranded, or adulterated prescription drugs and devices.

History: Cr. Register, **July. 1992,** No. **439,** eff. **8–1–92.**

Phar 13.14 Recordkeeping requirements. (1) A distributor shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of prescription drugs and devices. These records shall include the following information:

{a) The source of the drugs or devices, including the name and principal address of the seller or transferor, and the address of the location from which the drugs or devices were shipped:

(b) The'identity and quantity of the dmgs or devices received and distributed or disposed of; and

(cj The dates ofreceipt and distribution or other disposition of the drugs or devices.

(2) Inventories and records shall be made available for inspection and copying by the board, its authorized representatives, and authorized representatives of federal, state and local law enforcement agencies for a period of *2* years following distribution or other disposition of the drugs or devices.

(3) Records described in this section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within 2 working days of a request by the board or its authorized representative.

History: Cr. Register, **July,** 1992, **No. 439, eff. 8–1–92.**

Phar 13.15 Written policies and procedures. A distributor shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, and distribution of prescription drugs and devices, including policies and procedures for identifying, recording, and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories. A distributor shall include in their written policies and procedures the following:

(1) A procedure **to** ensure that the oldest approved stock of a prescription drug or device is distributed first. The procedure may permit deviation from this requirement if the deviation is temporary and appropriate.

(2) A procedure to be followed for handling recalls and withdrawals of prescription drugs and devices. The procedure shall be adequate to deal with recalls and withdrawals due to:

(a) Any action initiated at the request of the food and drug administration or other federal, state, or local law enforcement or other governmental agency, including the board;

(b) Any voluntary action by the manufacturer to remove defective or potentially defective drugs or devices from the market; or

(c) Any action undertaken to promote public health and safety by the replacing of existing merchandise with an improved product or new package design.

(3) A procedure to ensure that a distributor prepares for, protects against, and handles any crisis that affects security or operation of any facility in the event of strike, **fire,** flood, or other natural disaster, or other situations of local, state, or national emergency.

(4) A procedure to ensure that any outdated prescription drugs or devices are segregated from other products and either returned to the manufacturer or destroyed. This procedure shall provide for written documentation of the disposition of outdated prescription drugs or devices. This documentation shall be maintained for 2 years after disposition of the outdated drugs or devices.

History: Cr. Register, **July,** 1992, No. **439,** ef". **84–92.**

Phar 13.16 Responsible persons. A distributor shall establish and maintain lists of officers, directors, managers, and other persons in charge of wholesale drug and device distribution, storage, and handling, including a description of their duties and a summary of their qualifications.

History: Cr. Register, **July, 1992,** No. **439, eff. &I–92.**

Phar 13.17 Compliance with federal, state and local laws. (1) A distributor shall operate in compliance with applicable federal, state, and local laws and regulations. **A** distributor that deals in controlled substances shall register with the drug enforcement administration.

(2) Failure to comply with applicable federal, state, and local laws and regulations constitutes unprofessional conduct for purposes of **s.** 450.10, Stats.

(3) A distributor shall permit the board or its authorized representatives and authorized federal, state and local law enforcement officials to enter and inspect their premises and delivery vehicles, and to audit their records and written operating procedures, at reasonable times and in a reasonable manner, to the extent authorized by law. Such officials shall be required to show appropriate identification prior to being permitted access to a distributor's premises and dclivcry vehicles.

History: Cr. Register, July, 1992. No. **439.** eff 8–1–92.

(a) The identity of all solutions and ingredients and their corresponding amounts, concentration or volumes on the final preparation container in such a manner as to allow the locating of problematic final products.

(b) The identity of personnel involved in preparation.

(c) The date and time of pharmacy preparation where applicable.

(d) The final sterile pharmaceuticals expiration date and storage requirements. where applicable.

History: Cr. Register, March. 2000, No. 531, eff. 4–1–00.

Phar 15.06 Delivery service. The pharmacist shall assure the appropriate environmental control of all products shipped.

History: Cr. Register, March, 2000. No. 531, eff. 4–1–00.

Phar 15.07 Emergency kits. (1) When sterile pharmaceuticals are provided to home care patients, the dispensing pharmacy shall supply the patient or the patient's agent with emergency drugs, when authorized by the physician under protocol, if an emergency situation has been anticipated by either the physician, nurse or pharmacist.

(2) The dispensing pharmacy shall be responsible for providing written instructions on the storage and recordkeeping requirements for the emergency kit.

History: Cr. Register, March, 2000, No. **531,** eff. 4–1–00.

Phar 15.08 Cytotoxic drugs. In addition to the minimum requirements for a pharmacy established by rule of the board, the following requirements are necessary for those pharmacies that prepare cytotoxic drugs:

(1) All cytotoxic drugs shall be compounded in a vertical flow, class 11, biological safety cabinet. If non–exposed surfaces become contaminated with cytotoxic agents, no products other than cytotoxic drugs may be compounded in this cabinet until such time as the cabinet is decontaminated utilizing appropriate techniques to eradicate the contaminant.

(2) Personnel shall be protected by a protective barrier or apparel which shall include gloves, gowns and other applicable protective apparel as described in 29 CFR PART 1910 of OSHA regulations.

(3) Appropriate safety and containment techniques for compounding cytotoxic drugs shall be used in conjunction with the aseptic techniques required for preparing sterile pharmaceuticals.

(4) Pharmacy disposal and patient and caregiver education regarding disposal of cytotoxic waste shall comply with all applicable local, state and federal requirements.

(5) Written procedures for the handling of both major and minor spills of cytotoxic agents shall be developed and shall be included in the pharmacy policy and procedure manual.

(6) Prepared doses of cytotoxic drugs shall be dispensed, labeled with proper precautions on the primary and shipping container and should be shipped in a manner to minimize the risk of accidental rupture of the primary container.

History: Cr. Register, March, **2000,** No. **531,** eff. 4–1–00.

Phar 15.09 Labeling. In addition to the labeling requirements of s. 450.11 (4), Stats., the following shall also be included on the labels of sterile pharmaceuticals:

(1) Control or lot number.

(2) Expiration date and time, when applicable.

(3) Appropriate auxiliary labeling, including precautions.

(4) Storage requirements.

(5) Identification of the responsible pharmacist.

History: Cr. Register, March, 2000, No. **531.** eff. 4–1–00

Phar 15.10 Patient training. A pharmacist is responsible for documenting the patient's training and competency in managing the type of therapy provided by the pharmacist to the patient if administered by the patient or a caregiver. **A** pharmacist is responsible for the provision of or supervision of the patient training process in any area that relates to drug compounding, administration, labeling, storage, stability or incompatibility. **A** pharmacist shall be responsible for seeing that the patient's competency in the above areas is reassessed on an ongoing basis.

History: Cr. Register, March, 2000, No. **531.** eff. 4–1–00.

Phar 15.11 Quality assurance. (1) There shall be a documented, ongoing quality assurance control program that monitors personnel performance, equipment and facilities. Appropriate samples of finished products shall be examined to assure that the pharmacy is capable of consistently preparing sterile pharmaceuticals meeting specifications.

(2) The area designated for preparing sterile pharmaceuticals and all horizontal and vertical laminar flow hoods shall be certified to be operationally efficient and meet the standards of a class 100 environment by an independent contractor. All biological safety cabinets shall be certified according to national sanitation foundations standard 49 or manufacturer's specifications. Certification shall take place before initial use or after relocation and at least annually. Certification records shall be maintained.

Note: "National Sanitation Foundations Standard 49" refers **to *National Sanitation Foundation standard no 49for class II (laminar flow) biohazard cabinetry / as prepared by the NSF Advisory Committee on Biohazard Cabinetry; and recoinmended for adoption by the NSF Council of Public Health Consultants*** by the National Sanitation Foundation (U.S.) published in **1983 by** the National Sanitation Foundation of Ann Arbor, Michigan.

(3) A pharmacy shall have written procedures requiring sampling for microbial contamination through a validation procedure, simulation of actual aseptic preparation, and by using bacterial growth medium to culture environmental samples.

(4) If compounding of parenteral solutions is performed using non–sterile chemicals, extensive end–product sterility testing shall be documented. If any parenteral solution fails the testing, procedures shall be in place to quarantine future products for sterility testing to assure end–product sterility prior to release of the products from quarantine. The compounding process shall utilize components and techniques that assure a sterile and particulate–free product.

(5) A pharmacy shall have written justification of the assigned expiration date for pharmacy prepared sterile pharmaceuticals.

(6) A pharmacy shall have documentation of quality assurance audits, including infection control and sterile technique audits at least annually.

(7) **A** pharmacy shall have procedures to assure consistent preparation of sterile pharmaceuticals.

History: **Cr.** Register, March, 2000, No. **531.** eff. **4-1-40.**

Chapter Phar 16

CONTINUING EDUCATION FOR PHARMACISTS

Phar 16.01 Authority and purpose. The rules in this chapter are adopted by the pharmacy examining board pursuant to the authority delegated by ss. 15.08 (5) (b), 227.11 (2) and 450.02 (2g) (a), Stats.

History: Cr. Register, November, 1999, No. 527, eff. 12–1–99.

Phar 16.02 Continuing education required; waiver. **(1)** Each pharmacist required to complete the continuing education requirement provided under s. 450.085, Stats., shall, at the time of making application for renewal of a license under s. 450.08 (2) (a), Stats., sign a statement on the application for renewal certifying that the pharmacist has completed at least 30 hours of acceptable continuing education programs within the 2–year period immediately preceding the date of his or her application for renewal. The 30 hours of continuing education for pharmacists first applies to applications that are submitted to the department to renew a license to practice pharmacy that expires on June 1,2000. This subsection does not apply to an application for renewal of a license that expires on the first renewal date after the date on which the board initially granted the license.

(2) A pharmacist may apply to the board for waiver of the requirements of this chapter on grounds of exceptional circumstances such as prolonged illness, disability or other similar circumstances that the pharmacist indicates have prevented him or her from meeting the requirements. The board will consider each application for waiver individually on its merits.

History: Cr. Register, November, 1999, No. 527, eff. 12–1–99.

Phar 16.03 Acceptable continuing educational programs. The board recognizes only those educational programs offered by a provider approved by the American council on pharmaceutical education at the time of the pharmacist's attendance, or other board approved programs.

Note: A list of *board* approved p r o p s is available *from* the Department of Regulation and Licensing, Bureau of Health Professions, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708. As of August 9,1999, the board has not approved any programs other than programs offered by a provider approved by the American Council on Pharmaceutical Education.

History: Cr. Register. November, 1999. No. 527, eff. 12–1–99; reprinted to correct printing error, Register, February, 2000, No. 530.

Phar 16.04 Evidence of compliance. The board accepts as evidence of compliance with this chapter certification by a providing institution or organization that a pharmacist has attended and completed continuing education programs approved under the provisions of s. Phar 16.03. Certification may be the original, or verified copies of, documents certifying attendance and completion.

History: Cr. Register, November, 1999. No. 527, eff. 12–1–99.

Phar 16.05 Retention requirement. The pharmacist shall retain evidence of compliance for 3 years following the renewal date for the biennium for which 30 hours of credit are required for renewal of a license.

Note: For example, a pharmacist who renews his or her license on June 1, 2000, must retain proof of having obtained 30 hours of continuing education in the 2 years preceding renewal until June 1, 2003.

History: Cr. Register, November, 1999, No. 527, eff. 12–1–99.

Phar 16.06 Audit. The board may require any pharmacist to submit his or her evidence of compliance with the continuing education requirements to audit compliance.

History: Cr. Register. November, 1999, No. 527, eff. 12–1–99.

Chapter Phar 17

PHARMACY INTERNSHIP

Phar 17.01 Authority. The rules in this chapter are adopted pursuant to the authority in ss. 15.08 (5) (b), 227.11 (2), 450.03 (1) (g) and 450.04 (3) (b), Stats.

History: CR 01–134: cr. Register July 2002 No. *559*, eff. 8–1–02.

Phar 17.02 Definitions. In this chapter:

(1) "Academic internship" means a practical experience program consisting of the practice of pharmacy sponsored by a professional bachelor's of science degree in pharmacy or doctor of pharmacy degree granting institution located in this or another state.

(2) "Direct supervision" means immediate on premises availability to continually coordinate, direct and inspect at first hand the practice of another.

(3) "Foreign graduate internship" means the practice of pharmacy by a person who has first filed an application with the board for original licensure under s. Phar 2.02 and has not graduated from a professional bachelor's of science degree in pharmacy or doctor of pharmacy degree granting institution located in this or another state.

(4) "Intern" means a person engaged in the practice of pharmacy pursuant to subs. (1), (3), **(6)** and (8) or **s.** 450.03 (1) (g), Stats.

(5) "Internship in the practice of pharmacy" means the completion of a minimum of 1500 hours in aggregate in the practice of pharmacy under subs. (1), (3), (6), **(7)** or (8).

(6) "Postgraduate internship" means the practice of pharmacy by a person who has first filed an application with the board for original licensure under s. Phar 2.02 and has graduated from a professional bachelor's of science degree in pharmacy or doctor of pharmacy degree granting institution located in this or another state.

(7) "Practical experience internship" means practical experience acquired in another state which is comparable to an internship as described in subs. (1), (3), **(6)** and (8).

(8) "Student non–academic internship" means the practice of pharmacy by a person which is not acquired in an academic internship.

(9) "Supervising pharmacist" means a pharmacist who supervises and is responsible for the actions of an intern in the practice of pharmacy.

History: CR 01–134: cr. Register July 2002 No. *559*, eff. 8–1–02.

Phar 17.03 Academic internship. A person participating in an academic internship is not required to register as an intern with the board. There is no restriction in the number of hours earned in an academic internship.

History: CR 01–134: cr. Register July 2002 No. *559*, eff. 8–1–02.

Phar 17.04 Foreign graduate internship. (1) Prior to performing duties as an intern or to receiving credit for hours participating in a foreign graduate internship the person must file an application with the board for original licensure under s. Phar 2.02.

(2) A foreign graduate internship is limited to performing duties constituting the practice of pharmacy under the supervision of a supervising pharmacist. The supervising pharmacist shall keep a written record of the hours and location worked by an intern under his or her supervision, signed by the intern and the supervising pharmacist. The written record shall be produced to the board upon request.

(3) A person shall not further engage in the practice of pharmacy as a foreign graduate intern in excess of 2000 hours unless that person first submits to the board evidence of having obtained certification by the foreign pharmacy graduate examination committee.

(4) Upon completing a maximum of 3000 hours of the practice of pharmacy in a foreign graduate internship, the internship is terminated and the person shall not further engage in the practice of pharmacy until obtaining licensure from the board.

(5) **A** person currently practicing pharmacy as an intern on or before December 31, 2001, who registered as an intern under former **s.** Ph–Int 1.01 (3) (d) 3., is not required to comply with the requirements of this section until May 31 in the third year succeeding the year in which the registration under former **s.** Ph–Int 1.01 (3) (d) 3., was granted, unless such registration was previously revoked, suspended or canceled. The supervising pharmacist shall keep a written record of the hours and location worked by the person as an intern under his or her supervision, signed by the person and the supervising pharmacist. The written record shall be produced to the board upon request. Internship hours completed under this subsection may be certified to the board on a board approved form.

History: CR 01–134: cr. Register July 2002 No. *559*, eff. 8–1–02.

Phar 17.05 Postgraduate internship. (1) Prior to performing duties as an intern or to receiving credit for hours participating in a postgraduate internship, the person must file an application with the board for original licensure under s. Phar 2.02 and submit to the board evidence of having been graduated from a professional bachelor's of science degree in pharmacy or doctor of pharmacy degree granting institution located in this or another state.

(2) A postgraduate internship is limited to performing duties constituting the practice of pharmacy under the supervision of a supervising pharmacist. The supervising pharmacist shall keep a written record of the hours and location worked by **an** intern under his or her supervision, signed by the intern and the supervising pharmacist therapist. The written record shall be produced to the board upon request.

(3) Upon completing a maximum of 2000 hours of the practice of pharmacy in a postgraduate internship, the internship **is** terminated and the person shall not further engage in the practice of pharmacy until obtaining licensure from the board.

History: CR 01–134: cr. Register July 2002 No. *559*, eff. 8–1–02.

Phar 17.06 Practical experience internship. There is no restriction in the number of hours earned in a practical experience internship. In determining comparable practical experience the board shall consider the duties performed constituting the practice of pharmacy as described in s. 450.01 (16), Stats.

Hirtory: CR 01–134: cr. Register July 2002 No. *559*, eff. 8–1–02.

Phar 17.07 Student non–academic internship. (1) Prior to performing duties as an intern or to receiving credit for hours participating in a student non–academic internship the person must successfully complete his or her second year in and be enrolled at a professional bachelor's of science degree in pharmacy or doctor of pharmacy degree granting institution located in this or another state.

(2) A student non–academic internship is limited to performing duties constituting the practice of pharmacy under the direct supervision of a supervising pharmacist. The supervising pharmacist shall keep a written record of the hours and location worked by an intern under his or her direct supervision, signed by the intern and the supervising pharmacist. The written record shall be produced to the board upon request.

History: *CR* **01–134:** *cr.* **Register July 2002 No. 559,** *eff.* **8–1-02.**

Chapter Med 8

PHYSICIAN ASSISTANTS

Note: Chapter Med 8 as it existed *on* October 31, 1976 was repealed and a new chapter Med 8 was created effective November 1, 1976. Sections Med 8.03 to 8.10 as they existed on July 31, 1984 were repealed and recreated effective August 1, 1984.

Med 8.01 Authority and purpose. The rules in this chapter are adopted by the medical examining board pursuant to authority in ss. 15.08(5), 227.11, 448.04 (1) (f) and 448.40, Stats., and govern the licensure and regulation of physician assistants.

History: Cr. Register, October, 1976, No. 250, eff. 11–1–76; am. Register. April, 1981, No. 304, eff. 5–1-81; am. Register, July, 1984, No. 343. eff. 8–1–84; correction made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1989. No. 401; am. Register, October, 1996. No. 490, eff. 11–1–96; am. Register, December, 1999, No. 528, eff. 1–1–00.

Med 8.02 Definitions. (1) "Board" means the medical examining board.

(2) "Council" means the council on physician assistants.

(3m) "DEA" means the United States drug enforcement administration.

(4) "Educational program" means a program for educating and preparing physician assistants which is approved by the board.

(5) "Individual" means a natural person, and does not include the terms firm, corporation, association, partnership, institution, public body, joint stock association, or any other group of individuals.

(5m) "License" means documentary evidence issued by the board to applicants for licensure as a physician assistant who meet all of the requirements of the board.

(6) "Supervision" means to coordinate, direct, and inspect the accomplishments of another, or to oversee with powers of direction and decision the implementation of one's own or another's intentions.

History: Cr. Register, October, 1976. No. 250, eff. 11–1–76; am. (6) and (7) (b) to (e), Register, June, 1980, No. 294, eff. 7–1–80; r. (7), Register, July: 1984, No. 343, eff. R1-84; am. (2), (3) and (4) and cr. (3m), Register, October, 1996, No. 490, eff. 11–1–96; renum. (3) to be (5m) and am., am. (6), Register, December, 1999, No. 528, eff. 1–1–00.

Med 8.03 Council. As specified in s. 15.407(2), Stats., the council shall advise the board on the formulation of rules on the education, examination, licensure and practice of a physician assistant.

History: Cr. Register. **July,** 1984. No. 343, eff. 8–1–84; am. Register, October, 1996, No. 490, eff. 11–1–96; am. Register, December, 1999, No. 528, eff. I–1-00; **correction made under s. 13.93 (2m) (b) 7., Stats.**

Med 8.04 Educational program approval. The board shall approve only educational programs accredited and approved by the committee on allied health education and accreditation of the American medical association, the commission for accreditation of allied health education programs, or its successor agency.

History: Cr. Register, July. 1984, No. 343. eff. 8–1–84; am. Register. October, 1994, No. 466. eff. 11–1–94; am. Register, December, 1999, No. 528. eff. 1–1–00.

Med 8.05 Panel review of applications; examinations required. The board may use a written examination prepared, administered and scored by the national commission on certification of physician assistants or its successor agency, or a written examination from other professional testing services as approved by the board.

(1) APPLICATION. An applicant for examination for licensure as a physician assistant shall submit to the board:

(a) An application on a form prescribed by the board.

Note: An application form may be obtained upon request to the Medical Examining Board office located at 1400 East Washington Avenue, P.O. Box 8935, Madison. Wisconsin 53708.

(b) After July 1, 1993, proof of successful completion of an educational program, as defined in ss. Med 8.02 (4) and 8.04.

(c) Proof of successful completion of the national certifying examination.

(cm) Proof that the applicant is currently certified by the national commission on certification of physician assistants or its successor agency.

(d) The fee specified in s. 440.05 (1), Stats.

(e) An unmounted photograph, approximately 8 by 12 cm., of the applicant taken no more than 60 days prior to the date of application which has on the reverse side a statement of a notary public that the photograph is a true likeness of the applicant.

(2) EXAMINATIONS, PANEL REVIEW OF APPLICATIONS. (a) All applicants shall complete the written examination under this section, and an open book examination on statutes and rules governing the practice of physician assistants in Wisconsin.

(b) An applicant may be required to complete an oral examination if the applicant:

1. Has a medical condition which in any way impairs or limits the applicant's ability to practice as a physician assistant with reasonable skill and safety.

2. Uses chemical substances so as to impair in any way the applicant's ability to practice as a physician assistant with reasonable skill and safety.

3. Has been disciplined or had certification denied by a licensing or regulatory authority in Wisconsin or another jurisdiction.

4. Has been convicted of a crime, the circumstances of which substantially relate to the practice of physician assistants.

5. Has not practiced as a physician assistant for a period of 3 years prior to application, unless the applicant has been graduated from an approved educational program for physician assistants within that period.

6. Has been found to have been negligent in the practice as a physician assistant or has been a party in a lawsuit in which it was alleged that the applicant has been negligent in the practice of medicine.

7. Has been diagnosed as suffering from pedophilia, exhibitionism *or* voyeurism.

8. Has within the past 2 years engaged in the illegal use of controlled substances.

9. Has been subject to adverse formal action during the course of physician assistant education, postgraduate training, hospital practice, or other physician assistant employment.

(c) An application filed under this chapter shall bc reviewed by an application review panel of at least *2* council members des-

ignated by the chairperson of the board to determine whether an applicant is required to complete an oral examination under par. (a). If the application review panel is not able to reach unanimous agreement on whether an applicant is eligible for licensure without completing an oral examination, the application shall be referred to the board for a final determination.

(d) Where both written and oral examinations are required they shall be scored separately and the applicant shall achieve a passing grade on both examinations to qualify for a license.

(3) EXAMINATION FAILURE. An applicant who fails to receive a passing score on an examination may reapply by payment of the fee specified in sub. (1) (d). An applicant may reapply twice at not less than 4–month intervals. If an applicant fails the examination 3 times. he or she may not be admitted to an examination unless the applicant submits proof of having completed further professional training or education as the board may prescribe.

Note: There is no provision for waiver of examination nor reciprocity under rules in s. Med *8.05.*

(4) LICENSURE; RENEWAL. At the time of licensure and each biennial registration of licensure thereafter, a physician assistant shall list with the board the name and address of the supervising physician and shall notify the board within 20 days of any change of a supervising physician.

History: Cr. Register, **July, 1984,** No. **343,** eff. **8–1–84;** am. (intro.). r. and recr. (2), Register, October, 1989, No. **406,** eff. 11–1–89; am. (1) (b), cr. (1) (cm), Register, **July, 1993,** No. **451,** eff. 8–1–93; am. (intro.), (1) (intro), (em), (2) (b) **4.**, 5., 6., (c) and **(4),** Register. October, **1996,** No. **490,** eff. **11–1–96;** am. **(2)(a).** (b) (intro.) and **3.** to 5., r. and recr. **(2)** (b) 1. and **2.,** cr. **(2)** (b) **7.** to **11.,** Register, February, **1997,** No. **494,** eff. **3–1–97;** am. (intro.), (1) (intro.) and (cm), **(2)** (b) 5., (c), (d) and **(4),** r. **(2)** (b) **10.** and 11., Register, December, 1999, No. **528,** eff. 1–1–00.

Med 8.053 Examination review by applicant. (1) An applicant who fails the oral or statutes and rules examination may request a review of that examination by filing a written request and required fee with the board within 30 days of the date on which examination results were mailed.

(2) Examination reviews are by appointment only.

(3) An applicant may review the statutes and rules examination for not more than one hour.

(4) An applicant may review the oral examination for not more than 2 hours.

(5) The applicant may not be accompanied during the review by any person other than the proctor.

(6) At the beginning of the review, the applicant shall be provided with a copy of the questions, a copy of the applicant's answer sheer or oral tape and a copy of the master answer sheet.

(7) The applicant may review the examination in the presence of a proctor. The applicant shall be provided with a form on which to write comments, questions or claims of error regarding any items in the examination. Bound reference books shall be permitted. Applicants shall not remove any notes from the area. Notes shall be retained by the proctor and made available to the applicant for use at a hearing, if desired. The proctor shall not defend the examination nor attempt to refute claims of error during the review.

(8) An applicant may not review the examination more than once.

History: Cr. Register, February, **1997.** No. **494,** eff. **3–1–97.**

Med 8.056 Board review of examination error claim. (1) An applicant claiming examination error shall file a written request for board review in the board office within 30 days of the date the examination was reviewed. The request shall include all of the following:

(a) The applicant's name and address.

(b) The type of license for which the applicant applied.

(c) A description of the mistakes the applicant believes were made in the examination content, procedures, or scoring, including the specific questions or procedures claimed to be in error.

(d) The facts which the applicant intends to prove, including reference text citations or other supporting evidence for the applicant's claim.

(2) The board shall review the claim, make a determination of the validity of the objections and notify the applicant in writing of the board's decision and any resulting grade changes.

(3) If the decision does not result in the applicant passing the examination, a notice of denial of license shall be issued. If the board issues a notice of denial following its review, the applicant may request a hearing under s. RL 1.05.

Note: The board office is located at **1400** East Washington Avenue. P.O. Box **8935,** Madison, Wisconsin **53708.**

History: Cr. Register, February: **1997,** No. **494,** eff. **3–1–97.**

Med 8.06 Temporary license. (1) An applicant for licensure may apply to the board for a temporary license to practice as a physician assistant if the applicant:

(a) Remits the fee specified in s. 440.05 (6), Stats.

(b) Is a graduate of an approved school and is scheduled to take the examination for physician assistants required by s. Med 8.05 (1) or has taken the examination and is awaiting the results; or

(c) Submits proof of successful completion of the examination required by s. Med 8.05 (1) and applies for a temporary license no later than 30 days prior to the date scheduled for the next oral examination.

(2) (a) Except as specified in par. (b), a temporary license expires on the date the board grants or denies an applicant permanent licensure. Permanent licensure to practice as a physician assistant is deemed denied by the board on the date the applicant is sent notice from the board that he or she has failed the examination required by s. Med 8.05 (1) (c).

(b) A temporary license expires on the first day of the next regularly scheduled oral examination for permanent licensure if the applicant is required to take, but failed to apply for, the examination,

(3) A temporary license may not be renewed.

(4) An applicant holding a temporary license may apply for one transfer of supervising physician and location during the term of the temporary license.

History: Cr. Register, **July, 1984,** No. **343,** eff. **8–1–84;** am. (1) (b) and (c). Register, October. **1989.** No. **406,** eff. 11–1–89; am. **(2)** (a), Register, **January, 1994,** No. **457,** eff. **2–1–94;** am. (1) (intro.) and **(2)** (a). Register, October, **1996,** No. **490,** eff. **11–1–96;** am. (1) (intro.) and (b) to **(3),** cr. **(4),** Register, December, **1999,** No. 528, eff. **1–1–00.**

Med 8.07 Practice. (1) SCOPE AND LIMITATIONS. In providing medical care, the entire practice of any physician assistant shall be under the supervision of a licensed physician. The scope of practice is limited to providing medical care specified in sub. **(2). A** physician assistant's practice may not exceed his or her educational training or experience and may not exceed the scope of practice of the supervising physician. **A** medical care task assigned by the supervising physician *to* a physician assistant may not be delegated by the physician assistant to another person.

(2) MEDICAL CARE. Medical care a physician assistant may provide include:

(a) Attending initially a patient of any age in any setting to obtain a personal medical history, perform an appropriate physical examination, and record and present pertinent data concerning the patient in a manner meaningful to the supervising physician.

(b) Performing, or assisting in performing, routine diagnostic studies as appropriate for a specific practice setting.

(c) Performing routine therapeutic procedures, including, but not limited to, injections, immunizations, and the suturing and care of wounds.

(d) Instructing and counseling a patient on physical and mental health, including diet, disease, treatment and normal growth and development.

(e) Assisting the supervising physician in a hospital or facility, as defined in s. 50.01 (1m), Stats., by assisting in surgery, making

patient rounds, recording patient progress notes, compiling and recording detailed narrative case summaries and accurately writing or executing orders under the supervision of a licensed physician.

(f) Assisting in the delivery of medical care to a patient by reviewing and monitoring treatment and therapy plans.

(g) Performing independently evaluative and treatment procedures necessary to provide an appropriate response to life-threatening emergency situations.

(h) Facilitating referral of patients to other appropriate community health-care facilities, agencies and resources.

(i) Issuing written prescription orders for drugs under the supervision of a licensed physician and in accordance with procedures specified in **s.** Med 8.08 (2).

History: Cr. Register, July, 1984, No. 343, eff. 8-1-44; **am.** (2) (i), Register, July, 1994, No, 463, eff. 8-1-94; am. (1) and (2) (intro.), Register, October, 1996, No. 490, eff. 11-1-96; am. (1), (2) (intro.), (c), (e), (f) and (i), Register, December, 1999, No. 528, eff. 1-1-00.

Med 8.08 Prescribing limitations. (1) A physician assistant may not prescribe or dispense any drug independently.

(2) A physician assistant may issue a prescription order only if all the following conditions apply:

(a) The physician assistant issues the prescription order only in patient sihiations specified and described in established written guidelines. The guidelines shall be reviewed at least annually by the physician assistant and his or her supervising physician.

(b) The supervising physician and physician assistant determine by mutual agreement that the physician assistant is qualified through training and experience to issue a prescription order **as** specified in the established written guidelines.

(c) The supervising physician is available for consultation as specified in s. Med 8.10 (3).

(d) The prescription orders prepared under procedures in this section contain all information required under s. 450.11 (1), Stats.

(e) The supervising physician either:

1. Reviews and countersigns the prescription order prepared by the physician assistant, or

2. Reviews and countersigns within 72 hours the patient record prepared by the physician assistant practicing in the office of the supervising physician or at a facility or a hospital in which the supervising physician has staff privileges, or

3. Reviews by telephone or other means, as soon as practicable but within a 72-hour period, and countersigns within one week, the patient record prepared by the physician assistant who practices in an office facility other than the supervising physician's main office of a facility or hospital in which the supervising physician has staff privileges.

History: Cr. Register, July, 1984, No. 343, eff. 8-1-84; r. (3), Register, July, 1994, No. 463, eff. 8-1-94; am. (1), (2) (intro.), (a), (b), (c), (d), (e) 1., 2. and 3., Register. October, 1996, No. 490, eff. 11-1-96; am. (1) to (2) (d), (e) 2. and 3., Register. December. 1999, No. 528, eff. 1-1-00.

Med 8.09 Employee status. No physician assistant may be self-employed. If the employer of a physician assistant is other than a licensed physician, the employer shall provide for, and may not interfere with, the supervisory responsibilities of the physician, as defined in **s.** Med 8.02 (6) and required in ss. Med 8.07 (1) and 8.10.

History: Cr. Register, July. 1984, No. 343, eff. 8-1-84; am. Register, October, 1996. No. 490, eff. 11-1-96.

Med 8.10 Employment requirements; supervising physician responsibilities. (1) No physician may concurrently supervise more than 2 physician assistants unless the physician submits a written plan for the supervision of more than 2 physician assistants and the board approves the plan. **A** physician assistant may be supervised by more than one physician.

(2) Another licensed physician may be designated by the supervising physician to supervise a physician assistant for a period not to exceed 8 weeks per year. Except in an emergency, the designation shall be made in writing to the substitute supervising physician and the physician assistant. The supervising physician shall file with the board a copy of the substitution agreement before the beginning date of the period of his or her absence.

(3) The supervising physician or substitute supervising physician shall be available to the physician assistant at all times for consultation either in person or within 15 minutes of contact by telephone or by 2-way radio or television communication.

(4) A supervising physician shall visit and conduct an on-site review of facilities attended by the physician assistants at least once a month. Any patient in a location other than the location of the supervising physician's main office shall be attended personally by the physician consistent with his or her medical needs.

History: Cr. Register. July, 1984, No. 343, eff. 84-84; am. (1), Register, December, 1999, No. 528, eff. 1-1-00,

Chapter Med 10

UNPROFESSIONAL CONDUCT

Note: Chapter Med 16 as it existed on October 31, 1976 was repealed and a new Chapter Med 10 was created effective November 1, 1976.

Med 10.01 Authority and purpose. The definitions of this chapter are adopted by the medical examining board pursuant to the authority delegated by ss. 15.08 (5) 227.11, and 448.40, Stats., for the purposes of ch. 448, Stats.

History: Cr. Register. October, 1976, No. 250, eff. 11-1-76; correction made under s. 13.93(2m)(b) 7., Stats., Register. May, 1989, No. **401.**

Med 10.02 Definitions. (1) For the purposes of these rules:

(a) "Board" means the medical examining board.

(b) "License" means any license, permit, certificate, or registration issued by the board.

(2) The term "unprofessional conduct" is defined to mean and include but not be limited to the following, or aiding or abetting the same:

(a) Violating or attempting to violate any provision or term of ch. 448, Stats., or of any valid rule of the board.

(b) Violating or attempting to violate any term, provision, or condition of any order of the board.

(c) Knowingly making or presenting or causing to be made or presented any false, fraudulent, or forged statement, writing, certificate, diploma, or other thing in connection with any application for license.

(d) Practicing fraud, forgery, deception, collusion, or conspiracy in connection with any examination for license.

(e) Giving, selling, buying, bartering, or attempting to give, sell, buy, or barter any license.

(f) Engaging or attempting to engage in practice under any license under any given name or surname other than that under which originally licensed or registered to practice in this or any other state. This subsection does not apply to change of name resulting from marriage, divorce, or order by a court of record.

(g) Engaging or attempting to engage in the unlawful practice of medicine and surgery or treating the sick.

(h) Any practice or conduct which tends to constitute a danger to the health, welfare, or safety of patient or public.

(i) Practicing or attempting to practice under any license when unable to do so with reasonable skill and safety to patients.

(j) Practicing or attempting to practice under any license beyond the scope of that license.

(k) Offering, undertaking, or agreeing to treat or cure a disease or condition by a secret means, method, device, or instrumentality; or refusing to divulge to the board upon demand the means, method, device, or instrumentality used in the treatment of a disease or condition.

(L) Representing ?hat a manifestly incurable disease or condition can be or will be permanently cured; or that a curable disease or condition can be cured within a stated time, if such is not the fact.

(m) Knowingly making any false statement, written or oral, in practicing under any license, with fraudulent intent; or obtaining or attempting to obtain any professional fee or compensation of any form by fraud or deceit.

(n) Wilfully divulging a privileged communication or confidence entrusted by a patient or deficiencies in the character of patients observed in the course of professional attendance, unless lawfully required to do so.

(o) Engaging in uninvited, in-person solicitation of actual or potential patients who, because of their particular circumstances, are vulnerable to undue influence; or engaging in false, misleading or deceptive advertising.

(p) Administering, dispensing, prescribing, supplying, or obtaining controlled substances as defined in s. 961.01 (4), Stats., otherwise than in the course of legitimate professional practice, or as otherwise prohibited by law.

(q) Having a license, certificate, permit, registration, or other practice credential granted by another state or by any agency of the federal government to practice medicine and surgery or treat the sick, which becomes limited, restricted, suspended, or revoked, or having been subject to other adverse action by the state licensing authority or by any agency of the federal government, including but not limited to the denial or limitation of an original credential, or the surrender of a credential, whether or not accompanied by findings of negligence or unprofessional conduct.

(r) Conviction of any crime which may relate to practice under any license, or of violation of any federal or state law regulating the possession, distribution, or use of controlled substances as defined in **s.** 961.01 (4), Stats. **A** certified copy of a judgment of a court of record showing such conviction, within this state or without, shall be presumptive evidence thereof.

(s) Prescribing, ordering, dispensing, administering, supplying, selling, or giving any amphetamine or sympathomimetic amine drug designated as a schedule II controlled substance to or for any person except for any of the following:

1. Use as an adjunct to opioid analgesic compounds for treatment of cancer-related pain,

2. Treatment of narcolepsy,

3. Treatment of hyperkinesis,

4. Treatment of drug induced brain dysfunction,

5. Treatment of epilepsy,

6. Differential diagnostic psychiatric evaluation of depression,

7. Treatment of depression shown to be refractory to other therapeutic modalities,

8. Clinical investigation of the effects of such drugs or compounds in which case an investigative protocol therefore shall have been submitted to and reviewed and approved by the board before such investigation has been begun.

(t) Aiding or abetting the unlicensed practice of medicine or representing that unlicensed persons practicing under supervision, including unlicensed M.D.'s and D.O's, are licensed, by failing to identify the individuals clearly as unlicensed physicians or delegates.

(u) Failure to inform a patient about the availability of all alternate, viable medical modes of treatment and about the benefits and risks of these treatments, including the benefits and **risks** associated with the use of extended wear contact lenses.

(w) Use in advertising of the term "board certified" or a similar phrase of like meaning unless in fact so certified and unless disclosure is made of the complete name of the speciality board which conferred the certification.

(x) Prescribing, ordering, dispensing, administering, supplying, selling or giving any anabolic steroid for the purposes of enhancing athletic performance or for other nonmedical purposes.

(z) Violating or aiding and abetting the violation of any law or administrative rule or regulation the circumstances of which substantially relate to the circumstances of the practice of medicine.

(za) Failure by a physician or physician assistant to maintain patient health care records consistent with the requirements of ch. Med **21.**

(zb) Prescribing, ordering, dispensing, administering, supplying, selling or giving any anorectic drug designated as a schedule III, IV or V controlled substance for the purpose of weight reduction or control in the treatment of obesity unless each of the following conditions is met:

1. The patient's body mass index, weight in kilograms divided by height in meters squared, is greater than 25.

2. A comprehensive history, physical examination, and interpreted electrocardiogram are performed and recorded at the time of initiation of treatment for obesity by the prescribing physician.

3. **A** diet and exercise program for weight loss is prescribed and recorded.

4. The patient is weighed at least once a month, at which time a recording is made of blood pressure, pulse, and any other tests as may be necessary for monitoring potential adverse effects of drug therapy.

5. No more than a 30-day supply of drugs is prescribed or dispensed at any one time.

6. No drugs are prescribed or dispensed for more than 90 days unless all of the following occur:

a. The patient has a recorded weight loss of at least 12 pounds in the first 90 days of therapy.

b. The patient has continued progress toward achieving or maintaining a target weight.

c. The patient has no significant adverse effects from the prescribed program.

7. Any variance from the foregoing requirements is justified by documentation in the patient's record.

History: Cr. Register, October, 1976, No. 250, eff. 11–1–76; cr. (2)(s), Register, October. 1977, No. 262, eff. 11–1–77; am. (2) (m), Register, April, 1978, No. 268, eff. 5-1–78; am. (2) (s), Register, May, 1978, No. 269, eff. 61–78; reprinted to correct History note, Register, June, 1980, No. 294; r. and recr. (2) *(o)*, cr. (2) ***(t)***, Register, September, 1985, No. 357, eff. 10–1–85; cr. (2) **(u),** Register, April, 1987, No. 376, eff. 5-1–87; cr. (2) (v), Register. **January,** 1988, No. 385. eff. 2–1–88; am. (2) (s), Register. March, 1990, No. 411, eff. 3–1–90; cr. (2) **(x),** Register, September, 1990, No. 417, eff. 10–1–90; cr. (2) (w), Register, October, 1990, No. 418, eff. 11–1–90; am. (2) (q). Register, August, 1992, No. 440. eff. 9-1–92; cr. (2) (y), Register, September, 1992, No. 441, eff. 10–1–92; cr. (2) **(z),** Register. May, 1995, No. 473, eff. 6–1–95; cr. (2) (za), Register, April, 1996, No. 484, eff. 5-1–96; am. (2) (q), Register. September, 1996, No. 489, eff. 10-1–96; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1997, No. 494; cr. (2) (zb), Register, May. 1998, No. 509, eff. 61–98; r. (2) (v) and (y), am. (2) (za), Register, December, 1999, No. 528, eff. 1–1–00; **CR 01–031: am. (2) (s) (intro.) and (zb) (intro.), Register October 2001 No. 550, eff. 11–1–01.**

Chapter Med 17

STANDARDS FOR DISPENSING AND PRESCRIBING DRUGS

Med 17.01 Authority and purpose. (1) The rules in this chapter are adopted pursuant to authority in ss. 15.08 (5) (b), 227.11 and ch. 448, Stats.

(2) The rules in this chapter are adopted to specify standards practitioners shall follow in dispensing prescription drugs for the protection of the public.

History: Cr. Register, September, 1982, No. 321, eff. 10–1–82; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1989, No. 401.

Med 17.02 Definitions. (1) "Controlled substance" has the meaning under s. 961.01 (4), Stats.

(2) "Practitioner" means a person holding a license to practice medicine and surgery.

(3) "Prescription drug" has the meaning under **s.** 450.01 (20), Stats.

History: Cr. Register, September, 1982, No. 321, eff. 10–1–82; correction in (3) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1989. No. 401; correction in (1) made under s. 13.93(2m) (b) 7., Stats., Register, February, 1997, No. 494; **am.** (2), Register, December, **1999, No. *528.*** eff. 1–1–00.

Med 17.03 Packaging. A prescription drug dispensed by a practitioner shall be dispensed in a child–resistant container if it is a substance requiring special packaging under 16 CFR 1700. 14 (1982) of the federal poison prevention packaging act.

History: Cr. Register, September, 1982, No. 321, eff. 10–1–82.

Med 17.04 Labeling. (1) A prescription drug dispensed by a practitioner shall contain a legible label affixed to the immediate container disclosing:

(a) The name and address of the facility from which the prescribed drug is dispensed;

(b) The date on which the Prescription is dispensed;

(c) The name of the practitioner who prescribed the drug or device;

(d) The full name of the patient;

(e) The generic name and strength of the prescription drug dispensed unless the prescribing practitioner requests omission of the name and strength of the drug dispensed; and,

(f) Directions for use of the prescribed drug and cautionary statements, if any, contained in the Prescription or required by law.

(2) NONAPPLICATION OF LABELING REQUIREMENTS. The labeling requirement specified in sub. (1) does not apply to complimentary samples dispensed by a practitioner in original containers or packaging supplied to the practitioner by a pharmaceutical manufacturer or distributor.

History: Cr. Register, September, 1982, No. 321, eff. 10–1–82.

Med 17.05 Recordkeeping. (1) PRESCRIPTION DRUGS. (a) **A** practitioner shall maintain complete and accurate records of each prescription drug received, dispensed or disposed of in any other manner.

(b) All prescription drugs dispensed by a practitioner shall be recorded in the patient record.

(2) CONTROLLED SUBSTANCES. (a) Records required by the federal controlled substances act and ch. 961, Stats., shall be maintained at the location where the drug is received, distributed or dispensed and be available for inspection by authorized persons for at least 5 years from the date of such record.

(b) Controlled substances dispensed by a practitioner shall be recorded as follows:

1. **As** provided in this section; and
2. On a separate log, in a separate bound log book in which each schedule of controlled substances dispensed is recorded separately and in chronological order with the following information:

a. The name of the substance.

b. Dosage form and strength of the substance.

c. Name and address of the person for whom dispensed.

d. Date of dispensing.

e. Quantity dispensed.

f. Name or initials of practitioner who dispensed the substance.

History: Cr. Register, September. 1982, No. 321, eff. 10–1–82; correction in (2) (a) made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1997, NO. 494.

Med 17.06 Prescription orders by nurses and ancillary health care personnel. Prescription orders prepared by professional nurses and ancillary health care personnel, as delegated and supervised by a practitioner under s. 448.03 (2) (e), Stats., shall contain in addition to other information required by this chapter, the name, address and telephone number of the delegating practitioner and the name, address and signature of the person preparing the prescription order.

History: Cr. Register, July, 1994, No. 463, eff. &I–94.

Chapter N 8

CERTIFICATION OF ADVANCED PRACTICE NURSE PRESCRIBERS

N 8.01 Authority and intent. (1) The rules in this chapter are adopted pursuant to authority of ss. 15.08 *(5)* (b), 227.11 *(2)* and 441.16, Stats., and interpret s. 441.16, Stats.

(2) The intent of the board of nursing in adopting rules in this chapter is to specify education, training or experience that a registered nurse must satisfy to call himself or herself an advanced practice nurse; to establish appropriate education, training and examination requirements that an advanced practice nurse must satisfy to qualify for a certificate to issue prescription orders; to define the scope of practice within which an advanced practice nurse prescriber may issue prescription orders; to specify the classes of drugs, individual drugs or devices that may not be prescribed by an advanced practice nurse prescriber; to specify the conditions to be met for a registered nurse to administer a drug prescribed or directed by an advanced practice nurse prescriber; to establish procedures for maintaining a certificate to issue prescription orders, including requirements for continuing education; and to establish the minimum amount of malpractice insurance required of an advanced practice nurse prescriber.

History: Cr. Register, February, 1995, No. 470, eff. 3–1–95.

N 8.02 Definitions. As used in this chapter:

(1) "Advanced practice nurse" means a registered nurse who possesses the following qualifications:

(a) The registered nurse has a current license to practice professional nursing in this state, or has a current license to practice professional nursing in another state which has adopted the nurse licensure compact;

(b) The registered nurse is currently certified by a national certifying body approved by the board as a nurse practitioner, certified nurse–midwife, certified registered nurse anesthetist or clinical nurse specialist; and,

(c) For applicants who receive national certification as a nurse practitioner, certified nurse–midwife, certified registered nurse anesthetist or clinical nurse specialist after July 1, 1998, the registered nurse holds a master's degree in nursing or a related health field granted by a college or university accredited by a regional accrediting agency approved by the board of education in the state in which the college or university is located.

(2) "Advanced practice nurse prescriber" means an advanced practice nurse who has been granted a Certificate to issue prescription orders under s. 441.16 (2), Stats.

(3) "Board" means the board of nursing.

(4) "Clinical pharmacology/therapeutics" means the identification of individual and classes of drugs, their indications and contraindications, their likelihood of success, their side–effects and their interactions, as well as, clinical judgment skills and decision–making, based on thorough interviewing, history–taking, physical assessment, test selection and interpretation, pathophysiology, epidemiology, diagnostic reasoning, differentiation of conditions, treatment decisions, case evaluation and non–pharmacologic interventions.

(5) "Collaboration" means a process which involves 2 or more health care professionals working together, in each other's presence when necessary, each contributing one's respective area of expertise to provide more comprehensive care than one alone can offer.

(6) "Health care professional" has the meaning given under s. 180.1901 (1m), Stats.

(6m) "One contact hour" means a period of attendance in a continuing education program of at least 50 minutes.

(7) "Patient health care record" has the meaning given under s. 146.81 (4), Stats.

History: Cr. Register, February. 1995, No. 470. eff. 3–1–95; CR 00–168: cr. (6m), Register August 2001 No. 548, eff. 9–1–01; **CR 01–046:** am. **(1)** (a), **Register October 2001 No. 550, eff. 11–1–01.**

N 8.03 Qualifications for certification as an advanced practice nurse prescriber. An applicant for initial certification to issue prescription orders shall be granted a certificate by the board if the applicant complies with all of the following:

(1) Has a current license to practice as a professional nurse in this state or has a current license to practice professional nursing in another state which has adopted the nurse licensure compact.

(2) Is currently certified by a national certifying body approved by the board as a nurse Practitioner, certified nurse–midwife, certified registered nurse anesthetist or clinical nurse specialist.

(3) For applicants who receive national certification as a nurse practitioner, certified nurse–midwife, certified registered nurse anesthetist or clinical nurse specialist after July 1, 1998, holds a master's degree in nursing or a related health field granted by a college or university accredited by a regional accrediting agency approved by the state board of education in the state in which the college or university is located.

(4) Has completed at least 45 contact hours in clinical pharmacology/therapeutics within 3 years preceding the application for a certificate to issue prescription orders.

(5) Has passed a jurisprudence examination for advanced practice nurse prescribers.

History: Cr. Register, February, 1995, No. 470, eff. 3–1–95; **CR 01–046:** am. **(1), Register October 2001 No. 550, eff. 11–1–01.**

N 8.04 Application procedure. *An* applicant for a certificate to practice as an advanced practice nurse prescriber shall file a completed notarized application on a form provided by the board. The application shall include:

(1) The signature of the applicant.

(2) The fee specified under s. 440.05 (1), Stats.

(3) Evidence of current certification by a national certifying body approved by the board as a nurse practitioner, certified nurse–midwife, certified registered nurse anesthetist or clinical nurse specialist.

(4) For applicants who receive national certification as a nurse practitioner, certified nurse–midwife, certified registered nurse anesthetist or clinical nurse specialist after July 1, 1998, certification of the grant of a master's degree in nursing or a related health field from, and submitted directly to the board by a college or university accredited by a regional accrediting agency approved by

the state board of education in the state in which the college or university is located.

(5) Satisfactory evidence of completion of at least 45 contact hours in clinical pharmacology/therapeutics within 3 years preceding the application for a certificate.

Note: Application forms are available on request to the Board of Nursing, 1400 East Washington Avenue. P.O. **Box** 8935, Madison, WI 53708.

History: Cr. Register. February, 1995, No. 470, eff. 3–1–95.

N 8.05 Continuing education. (1) Every advanced practice nurse prescriber shall submit to the board evidence of having completed an average **of** at least 8 contact hours per year in clinical pharmacology/therapeutics relevant to the advanced practice nurse prescriber's area of practice.

(2) Evidence of completion of continuing education meeting the requirements of sub. (1) shall be submitted to the board on a schedule consistent with the schedule for submission of evidence of continuing education hours established by the advanced practice nurse prescriber's national certifying body.

(3) Every advanced practice nurse prescriber shall retain for a minimum period of 4 years, and shall make available to the board or its agent upon request, certificates **of** attendance issued by the program sponsor for all continuing education programs for which he or she claims credit for purposes of renewal ***of*** his or her certificate.

History: Cr. Register, February, 1995, No. 470, eff. 3–1–95; CR 00–168: cr. (3), Register August 2001 No. 548, eff. 9–1–01.

N 8.06 Prescribing limitations. The advanced practice nurse prescriber:

(1) May issue only those prescription orders appropriate to the advanced practice nurse prescriber's areas of competence, as established by his or her education, training or experience.

(2) May not issue a prescription order for any schedule I controlled substance.

(3) May not prescribe, dispense or administer any amphetamine, sympathomimetic amine drug or compound designated as a schedule II controlled substance pursuant to the provisions of s. 961.16(5), Stats., to or for any person except for any of the following:

(a) Use as an adjunct to opioid analgesic compounds for the treatment of cancer–related pain.

(b) Treatment of narcolepsy.

(c) Treatment of hyperkinesis.

(d) Treatment of drug–induced brain dysfunction.

(e) Treatment of epilepsy.

(f) Treatment of depression shown to be refractory to other therapeutic modalities.

(4) May not prescribe, order, dispense or administer any anabolic steroid for the purpose of enhancing athletic performance or for other nonmedical purpose.

(5) Shall, in prescribing or ordering a drug for administration by a registered nursc or licensed practical nurse under s. 441.16 (3) (cm), Stats., present evidence to the nurse and to the administration of the facility where the prescription or order is to be carried out that the advanced practice nurse prescriber is properly certified to issue prescription orders.

History: Cr. Register, February, 1995, No 470, eff 3–1–95, correction in (3) made under s 13.93(2m) (b) 7., Stats, Register, October, 2000, No 538

N 8.07 Prescription orders. (1) Prescription orders issued by an advanced practice nurse prescribers shall:

(a) Specify the date of issue.

(b) Specify the name and address of the patient.

(c) Specify the name, address and business telephone number of the advanced practice nurse prescriber.

(d) Specify the name and quantity of the drug product or device prescribed, including directions for use.

(e) Bear the signature of the advanced practice nurse prescriber.

(2) Prescription orders issued by advanced practice nurse prescribers for a controlled substance shall be written in ink or indelible pencil or shall be typewritten, and shall contain the practitioner's controlled substances number.

History: Cr. Register, February, 1995, No. 470, eff. 3–1–95.

N 8.08 Malpractice insurance coverage. (1) Advanced practice nurse prescribers who prescribe independently shall maintain in effect malpractice insurance evidenced by one **of** the following:

(a) Personal liability coverage in the amounts specified in s. 655.23 (4), Stats.

(b) Coverage under a group liability policy providing individual coverage for the nurse in the amounts set forth in s. 655.23 (4), Stats. An advanced practice nurse prescriber covered under one or more such group policies shall certify on forms provided by the board that the nurse will independently prescribe only within the limits of the policy's coverage, or shall obtain personal liability coverage for independent prescribing outside the scope of the group liability policy or policies.

(2) Nohvithstanding sub. (1), an advanced practice nurse prescriber who practices as an employee **of** this state or a governmental subdivision, as defined under s. 180.0103, Stats., is not required to maintain in effect malpractice insurance coverage, but the nurse shall certify on forms provided by the board that the nurse will prescribe within employment policies.

(3) An advanced practice nurse prescriber who prescribes under the supervision and delegation of a physician or CRNA shall certify on forms provided by the board that the nurse complies with s. N 6.03 ***(2)*** and (3), regarding delegated acts.

(4) An advanced practice nurse prescriber who prescribes in more than one setting or capacity shall comply with the provisions of subs. (1), ***(2)*** and (3) applicable to each setting **or** capacity. An advanced practice nurse prescriber who is not an employee of this state or a governmental subdivision, and who prescribes independently in some situations and prescribes under the supervision and delegation of a physician or CRNA in other situations, shall meet the requirements of sub. (1) with respect to independent prescribing and the requirements of sub. (3) with respect to delegated prescribing.

Note: Forms are available from the board office located at 1400 East Washington Avenue, P.O. Box 8935. Madison, Wisconsin 53708.

(5) Every advanced practice nurse who is certified to issue prescription orders shall annually submit to the board satisfactory evidence that he or she has in effect malpractice insurance required by sub. (1).

History: Cr. Register, February, 1995, No. 470, eff. 3–1–95; r. and recr. (1), renum. (2) to be (5) and cr. (2), (3) and (4). Register. October, 1996, No. 490, eff. 11–1–96.

N 8.09 Dispensing. (1) Except as provided in sub. (2), advanced practice nurse prescribers shall restrict their dispensing of prescription drugs to complimentary samples dispensed in original containers or packaging supplied by a pharmaceutical manufacturer or distributor.

(2) An advanced practice nurse prescriber may dispense drugs to a patient if the treatment facility at which the patient is treated is located at least 30 miles from the nearest pharmacy.

History: Cr. Register. February, 1995, No. 470, eff. 3–1–95.

N 8.10 Case management and collaboration with other health care professionals. (1) Advanced practice nurse prescribers shall communicate with patients through the use of modem communication techniques.

(2) Advanced practice nurse prescribers shall facilitate collaboration with other health care professionals, at least 1 of whom shall be a physician, through the use of modern communication techniques.

(3) Advanced practice nurse prescribers shall facilitate referral of patient health care records to other health care professionals and shall notify patients of their right to have their health care records referred to other health care professionals.

(4) Advanced practice nurse prescribers shall provide a summary of a patient's health care records, including diagnosis, surgeries, allergies and current medications to other health care providers as a means of facilitating case management and improved collaboration.

(5) The board shall promote communication and collaboration among advanced practice nurses, physicians and other health care professionals, including notification to advanced practice nurses of mutual educational opportunities and available communication networks.

(6) To promote case management, the advanced practice nurse prescriber may order laboratory testing, radiographs or electrocardiograms appropriate to his or her area of competence as established by his or her education, training, or experience.

(7) Advanced practice nurse prescribers shall work in a collaborative relationship with a physician. The collaborative relationship is a process in which an advanced practice nurse prescriber is working with a physician, in each other's presence when necessary, to deliver health care services within the scope of the practitioner's professional expertise. The advanced practice nurse prescriber and the physician must document this relationship.

History: Cr. Register, February, 1995, No. 470, eff. 3–1–95; cr. **(6) and** (7), Register, October, **2000,** No. 538, eff. 11–1–00.

Chapter RL 1

PROCEDURES TO REVIEW DENIAL OF AN APPLICATION

RL 1.01 Authority and scope. Rules in this chapter are adopted under authority in s. 440.03 (I), Stats., for the purpose of governing review of a decision to deny an application. Rules in this chapter do not apply to denial of an application for renewal of a credential. Rules in this chapter shall apply to applications received on or after July 1, 1996.

Note: Procedures used for denial of an application for renewal of a credential are found in Ch. RL 2, Wis. Admin. Code and s. 227.01 (3) (b). Stats.

Ilistory: Cr. Register, October, 1985, No. 358, eff. 11–1–85; am., Register, July, 1996, No. 487, eff. 8–1–96.

RL 1.02 Scope. History: Cr. Register, October, 1985, No. 358, eff. 11–1–85; r., Register, July, 1996, No. 487, eff. 8–1–96.

RL 1.03 Definitions. In this chapter:

(1) "Applicant" means any person who applies for a credential from the applicable credentialing authority. "Person" in this subsection includes a business entity.

(2) "Credential" means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 480, Stats.

(3) "Credentialing authority" means the department or an attached examining board, affiliated credentialing board or board having authority to issue or deny a credential.

(4) "Denial review proceeding" means a class I proceeding as defined in s. 227.01 (3) (a), Stats., in which a credentialing authority reviews a decision to deny a completed application for a credential.

(5) "Department" means the department of regulation and licensing.

(6) "Division" means the division of enforcement in the department.

History: Cr. Register, October, 1985, No. 358, eff. 11–1–85; correction in (4) made under s. 13.93 (2m) (b) 7., Stats., Register, May. 1988, No. 389; am. (1), (4), r. (2), renum. (3) to be (5), cr. (2), (3), (6), Register, July, 1996, No. 487, eff. 8–1–96.

RL 1.04 Examination failure: retake and hearing.

(1) An applicant may request a hearing to challenge the validity, scoring or administration of an examination if the applicant has exhausted other available administrative remedies, including, but not limited to, internal examination review and regrading, and if either:

(a) The applicant is no longer eligible to retake a qualifying examination.

(b) Reexamination is not available within **6** months from the date of the applicant's last examination.

(2) A failing score on an examination does not give rise to the right to a hearing if the applicant is eligible to retake the examination and reexamination is available within 6 months from the date of the applicant's last examination.

Note: An applicant is not eligible for a license until his or her application is complete. An application is not complete until an applicant has submitted proof of having successfully passed any required qualifying examination. If an applicant fails the qualifying examination, but bas the right to retake it within 6 months, the applicant is not entitled to a hearing under this chapter.

History: Cr., Register. July, 1996, No. 487, eff. 8–1–96.

RL 1.05 Request for hearing. History: Cr. Register, October, 1985, No. 358, eff. 11–1–85; corrections in (2) (a) and (b) made under s. 13.93 (2m) (b) 7., Stats., Register. May, 1988, No. 389; r. Register. July, 1996, No. 487, eff. 8–1–96.

RL 1.05 Notice of intent to deny and notice of denial.

(1) NOTICE OF INTENT TO DENY. (a) A notice of intent to deny may be issued upon an initial determination that the applicant does not meet the eligibility requirements for a credential. A notice of intent to deny shall contain a short statement in plain language of the basis for the anticipated denial, specify the statute, rule or other standard upon which the denial will be based and state that the application shall be denied unless, within 45 calendar days from the date of the mailing of the notice, the credentialing authority receives additional infonnation which shows that the applicant meets the requirements for a credential. The notice shall be substantially in the form shown in Appendix **I.**

(b) If the credentialing authority does not receive additional information within the 45 day period, the notice of intent to deny shall operate as a notice of denial and the 45 day period for requesting a hearing described in s. RL 1.07 shall commence on the date of mailing of the notice of intent to deny.

(c) If the credentialing authority receives additional information within the **45** day period which fails to show that the applicant meets the requirements for a credential, a notice of denial shall be issued under sub. (2).

(2) NOTICE OF DENIAL If the credentialing authority determines that an applicant does not meet the requirements for a credential, the credentialing authority shall issue a notice of denial in the form shown in Appendix II. The notice shall contain a short statement in plain language of the basis for denial, specify the statute, rule or other standard upon which the denial is based, and be substantially in the form shown in Appendix II.

History: Cr., Register, July, 1996, eff. 8–1–96.

RL 1.06 Parties to a denial review proceeding. Parties to a denial review proceeding are the applicant, the credentialing authority and any person admitted to appear under s. 227.44 (2m), Stats.

History: Cr Register, October, 1985, No. 358, eff. 11–1–85; renum. from RL 1.04 and am., Register, July, 1996, No. 487, eff. 8–1–96.

RL 1.07 Request for hearing. An applicant may request a hearing within 45 calendar days after the mailing of a notice of denial by the credentialing authority. The request shall be in writing and set forth all of the following:

(1) The applicant's name and address.

(2) The type of credential for which the applicant has applied.

(3) A specific description of the mistake in fact or law which constitutes reasonable grounds for reversing the decision to deny the application for a credential. If the applicant asserts that a mistake in fact was made, the request shall include a concise statement of the essential facts which the applicant intends to prove at the hearing. If the applicant asserts a mistake in law was made, the request shall include a statement of the law upon which the applicant relies.

History: Cr., Register, July, 1996, No. 487, eff. 8–1–96.

RL 1.08 Procedure. The procedures for a denial review proceeding are:

(1) REVIEW OF REQUEST FOR HEARING. Within 45 calendar days of receipt of a request for hearing, the credentialing authority or its designee shall grant or deny the request for a hearing on a denial of a credential. A request shall be granted if requirements in s. RL 1.07 are met, and the credentialing authority or its designee shall

notify the applicant of the time, place and nature of the hearing. If the requirements in s. RL 1.07 are not met, a hearing shall be denied, and the credentialing authority or its designee shall inform the applicant in writing of the reason for denial. For purposes of a petition for review under s. 227.52, Stats., a request is denied if a response to a request for hearing is not issued within 45 calendar days of its receipt by the credentialing authority.

(2) DESIGNATION OF PRESIDING OFFICER. An administrative law judge employed by the department shall preside over denial hearings, unless the credentialing authority designates otherwise. The administrative law judge shall be an attorney in the department designated by the department general counsel, an employe borrowed from another agency pursuant to s. 20.901, Stats., or a person employed as a special project or limited term employe by the department, except that the administrative law judge may not be an employe in the division.

(3) DISCOVERY. Unless the parties otherwise agree, no discovery is permitted, except for the taking and preservation of evidence as provided in ch. 804, Stats., with respect to witnesses described in s. 227.45 (7) (a) to (d), Stats. An applicant may inspect records under s. 19.35, Stats., the public records law.

(4) BURDEN OF PROOF. The applicant has the burden of proof to show by evidence satisfactory to the credentialing authority that the applicant meets the eligibility requirements set by law for the credential.

History: *Cr.*, **Register, July, 1996, No. 487, eff. 8–1–96.**

RL 1.09 Conduct of hearing. (1) RECORD. A stenographic, electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evidence, and of other oral proceedings when requested by a party.

(2) ADJOURNMENTS. The presiding officer may, for good cause, grant continuances, adjournments and extensions of time.

(3) SUBPOENAS. (a) Subpoenas for the attendance of any witness at a hearing in the proceeding may be issued in accordance with s. 227.45 (6m), Stats.

(b) A presiding officer may issue protective orders according to the provisions of s. 805.07, Stats.

(4) MOTIONS. All motions, except those made at hearing, shall be in writing, filed with the presiding officer and a copy served upon the opposing party not later than 5 days before the time specified for hearing the motion.

(5) EVIDENCE. The credentialing authority and the applicant shall have the right to appear in person or by counsel, to call, examine and cross-examine witnesses and to introduce evidence into the record. If the applicant submits evidence of eligibility for a credential which was not submitted to the credentialing authority prior to denial of the application, the presiding officer may request the credentialing authority to reconsider the application and the evidence of eligibility not previously considered.

(6) BRIEFS. The presiding officer may require the filing of briefs.

(7) LOCATION OF HEARING. All hearings shall be held at the offices of the department in Madison unless the presiding officer determines that the health or safety of a witness or of a party or an emergency requires that a hearing be held elsewhere.

History: Cr., Register, July, 1996, No. 487, eff. 8–1–96.

RL 1.10 Service. Service of any document on an applicant may be made by mail addressed to the applicant at the last address filed in writing by the applicant with the credentialing authority. Service by mail is complete on the date of mailing.

History: Cr Register, October, **1985,** No. **358, *eff.* 11–1-85; *renum.* from RL 1.06 and am., Register, July, 1996, No. 487, eff. 8–1–96.**

RL 1.11 Failure to appear. In the event that neither the applicant nor his or her representative appears at the time and place designated for the hearing, the credentialing authority may take action based upon the record as submitted. By failing to appear, an applicant waives any right to appeal before the credentialing authority which denied the license.

History: Cr. Register, October, **1985.** No. **358,** eff. **11–1–85; renum.** from **RL 1.07 and am., Register, July, 1996, No. 487, eff. 8–1–96.**

RL 1.12 Withdrawal of request. A request for hearing may be withdrawn at any time. Upon receipt of a request for withdrawal, the credentialing authority shall issue an order affirming the withdrawal of a request for hearing on the denial.

History: Cr., Register, July, 1996, No. 487, eff. 8–1–96.

RL 1.13 Transcription fees. (1) The fee charged for a transcript of a proceeding under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

(b) If a transcript is prepared by the department, the department shall charge a transcription fee of $1.75 per page and a copying charge of $.25 per page. If 2 or more persons request a transcript, the department shall charge each requester a copying fee of $.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee of $.25 per page.

(2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of a petition of indigency signed under oath. For purposes of this section, a determination of indigency shall be based on the standards used for making a determination of indigency under s. 977.07, Stats.

History: Cr., Register, July, 1996, No. 487, eff. 8–1–96.

Chapter RL 1

APPENDIX I

NOTICE OF INTENT TO DENY

[DATE]
[NAME and
ADDRESS OF APPLICANT]

Re: Application for [TYPE OF CREDENTIAL]; Notice of Intent to Deny

Dear [APPLICANT]:

PLEASE TAKE NOTICE that the state of Wisconsin [CREDENTIALING AUTHORITY] has reviewed your application for a [TYPE OF CREDENTIAL]. On the basis of the application submitted, the [CREDENTIALING AUTHORITY] intends to deny your application for reasons identified below unless, within 45 calendar days from the date of the mailing of this notice, the [CREDENTIALING AUTHORITY] receives additional information which shows that you meet the requirements for a credential.

[STATEMENT OF REASONS FOR DENIAL]

The legal basis for this decision is:

[SPECIFY THE STATUTE, RULE OR OTHER STANDARD UPON
WHICH THE DENIAL, WILL BE BASED]

If the [CREDENTIALING AUTHORITY] does not receive additional information within the 45 day period, this notice of intent to deny shall operate as a notice of denial and the 45 day period you have for requesting a hearing shall commence on the date of mailing of this notice of intent to deny.

_____
[Designated Representative of Credentialing Authority]

PLEASE NOTE that you have a right to a hearing on the denial of your application if you file a request for hearing in accordance with the provisions of Ch. RL 1 of the Wisconsin Administrative Code. If you do not submit additional information in support of your application, you may request a hearing within 45 calendar days after the mailing of this notice. Your request must be submitted in writing to the [CREDENTIALING AUTHORITY] at:

Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708–8935

The request must contain your name and address, the type of credential for which you have applied, a specific description of the mistake in fact or law that you assert was made in the denial of your credential, and a concise statement of the essential facts which you intend to prove at the hearing. You will be notified in writing of the [CREDENTIALING AUTHORITY'S'] decision. Under s. RL 1.08 of the Wisconsin Administrative Code, a request for a hearing is denied if a response to a request for a hearing is not issued with 45 days of its receipt by the [CREDENTIALING AUTHORITY]. Time periods for a petition for review begin to run 45 days after the [CREDENTIALING AUTHORITY] has received a request for a hearing and has not responded.

Chapter RL 1

APPENDIX II

NOTICE OF DENIAL

[DATE]
[NAME and
ADDRESS OF APPLICANT]

Re: Application for [TYPE OF CREDENTIAL]; Notice of Denial

Dear [APPLICANT]:

PLEASE TAKE NOTICE that the state of Wisconsin [CREDENTIALINGAUTHORITY] has reviewed your application for a [TYPE OF CREDENTIAL] and denies the application for the following reasons:

[STATEMENT OF REASONS FOR DENIAL]

The legal basis for this decision is:

[SPECIFY THE STATUTE, RULE OR OTHER STANDARD UPON
WHICH THE DENIAL WILL BE BASED]

_____

[Designated Representative of Credentialing Authority]

PLEASE NOTE that you have a right to a hearing on the denial of your application if you file a request for hearing in accordance with the provisions of Ch. RL 1 of the Wisconsin Administrative Code. You may request a hearing within 45 calendar days after the mailing of this notice of denial. Your request must be submitted in writing to the [CREDENTIALING AUTHORITY] at:

Department of Regulation and Licensing
1400 East Washington Avenue
P.O. **Box** 8935
Madison, WI 53708–8935

The request must contain your name and address, the type of credential for which you have applied, a specific description of the mistake in fact or law that you assert was made in the denial of your credential, and a concise statement of the essential facts which you intend to prove at the hearing. You will be notified in writing ***of*** the [CREDENTIALING AUTHORITY'S] decision. Under s. RL 1.08 of the Wisconsin Administrative Code, a request for a hearing is denied if a response to a request for a hearing is not issued within 45 days **of** its receipt by the [CREDENTIALING AUTHORITY]. Time periods for a petition for review begin to run 45 days after the [CREDENTIALING AUTHORITY] has received a request for a hearing and has not responded.

Chapter RL 2

PROCEDURES FOR PLEADING AND HEARINGS

RL 2.01 Authority. The rules in ch. RL 2 are adopted pursuant to authority in s. 440.03 (1), Stats., and procedures in ch. 227, Stats.

History: Cr. Register, October. 1978, No. 274, eff. 11–1–78; **am.** Register, May, 1982, No. 317, eff. 6–1–82.

RL 2.02 Scope; kinds of proceedings. The rules in this chapter govern procedures in class 2 proceedings, as defined in s. 227.01 (3) (b), Stats., against licensees before the department and all disciplinary authorities attached to the department, except that s. RL 2.17 applies also to class 1 proceedings, as defined in s. 227.01 (3) (a), Stats.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; **am.** Register, May, 1982, No. 317, eff. 6–1–82; corrections made under s. **13.93** (2m) (b) 7., Stats., Register. May, 1988, No. 389; am. Register, June, 1992, No. 438. eff. 7–1–92.

RL 2.03 Definitions. In this chapter:

(1) "Complainant" means the person who signs a Complaint.

(2) "Complaint" means a document which meets the requirements of ss. RL 2.05 and 2.06.

(3) "Department" means the department of regulation and licensing.

(4) "Disciplinary authority" means the department or the attached examining board or board having authority to revoke the license of the holder whose conduct is under investigation.

(5) "Disciplinary proceeding" means a proceeding against one or more licensees in which a disciplinary authority may determine to revoke or suspend a license, to reprimand a licensee, to limit a license, to impose a forfeiture, or to refuse to renew a license because of a violation of law.

(6) "Division" means the division of enforcement in the department.

(7) "Informal complaint" means any written information submitted to the division or any disciplinary authority by any person which requests that a disciplinary proceeding be commenced against a licensee or which alleges facts, which if true, warrant discipline.

(8) "Licensee" means a person, partnership, corporation or association holding any license, permit, certificate or registration granted by a disciplinary authority or having any right to renew a license, permit, certificate or registration granted by a disciplinary authority.

(9) "Respondent" means the person against whom a disciplinary proceeding has been commenced and who is named as respondent in a complaint.

(10) "Settlement conference" means a proceeding before a disciplinary authority or its designee conducted according to s. RL 2.036, in which a conference with one or more licensee is held to attempt to reach a fair disposition of an informal complaint prior to the commencement of a disciplinary proceeding.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. (1) and (6), renum. (7) and (8) to be (8) and (9), cr. (7), Register. May, 1982, No. 317, eff. 6–1–82; r. (1), renum. (2) to (4) to be (1) to (3), cr. (4) and (10), **am.** (5), (7) and (8), Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.035 Receiving informal complaints. All informal complaints received shall be referred to the division for filing, screening and, if necessary, investigation. Screening shall be done by the disciplinary authority, or, if the disciplinary authority directs, by a disciplinary authority member or the division. In this section, screening is a preliminary review of complaints to determine whether an investigation is necessary. Considerations in screening include, but are not limited to:

(1) Whether the person complained against is licensed;

(2) Whether the violation alleged is a fee dispute;

(3) Whether the matter alleged, if taken as a whole, is trivial; and

(4) Whether the matter alleged is a violation of any statute, rule or standard **of** practice.

History: Cr. Register, May, 1982, No. 317, eff. 61–82; **am.** (intro.) and (3), Register, June. 1992, No. 438, eff. 7–1–92.

RL 2.036 Procedure for settlement conferences. At the discretion of the disciplinary authority, a settlement conference may be held prior to the commencement of a disciplinary proceeding, pursuant to the following procedures:

(1) SELECTION OF INFORMAL COMPLAINTS. The disciplinary authority or its designee may determine that a settlement conference is appropriate during an investigation of an informal complaint if the information gathered during the investigation presents reasonable grounds to believe that a violation of the laws enforced by the disciplinary authority has occurred. Considerations in making the determination may include, but are not limited to:

(a) Whether the issues arising out of the investigation of the informal complaint are clear, discrete and sufficiently limited to allow for resolution in the informal setting of a settlement conference; and

(b) Whether the facts of the informal complaint are undisputed or clearly ascertainable from the documents received during investigation by the division.

(2) PROCEDURES. When the disciplinary authority or its designee has selected an informal complaint for a possible settlement conference, the licensee shall be contacted by the division to determine whether the licensee desires to participate in a settlement conference. A notice of settlement conference and a description of settlement conference procedures, prepared on forms prescribed by the department, shall be sent to all participants in ad-

vance of any settlement conference. A settlement conference shall not be held without the consent of the licensee. No agreement reached between the licensee and the disciplinary authority or its designee at a settlement conference which imposes discipline upon the licensee shall be binding until the agreement is reduced to writing, signed by the licensee, and accepted by the disciplinary authority.

(3) ORAL STATEMENTS AT SETTLEMENT CONFERENCE. Oral statements made during a settlement conference shall not be introduced into or made part of the record in a disciplinary proceeding.

History Cr. Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.037 Parties to a disciplinary proceeding. Parties to a disciplinary proceeding are the respondent, the division and the disciplinary authority before which the disciplinary proceeding is heard.

History: Cr. Register, May, 1982. No. 317, eff. 61–82: renum. from RL 2.036 and am. Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.04 Commencement of disciplinary proceedings. Disciplinary proceedings are commenced when a notice of hearing is filed in the disciplinary authority office or with a designated administrative law judge.

History: Cr. Register, February, 1979, No. 278, eff. 3–1–79; am. Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.05 Pleadings to be captioned. All pleadings, notices, orders, and other papers filed in disciplinary proceedings shall be captioned: "BEFORE THE _____" and shall be entitled: "IN THE MATTER OF DISCTPLTNARY PROCEEDINGS AGAINST _____, RESPONDENT."

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78.

RL 2.06 Complaint. A complaint may be made on information and belief and shall contain:

(1) The name and address of the licensee complained against and the name and address of the complainant;

(2) A short statement in plain language of the cause for disciplinary action identifying with reasonable particularity the transaction, occurrence or event out of which the cause arises and specifying the statute, rule or other standard alleged to have been violated;

(3) A request in essentially the following form: "Wherefore, the complainant demands that the disciplinary authority hear evidence relevant to matters alleged in this complaint, determine and impose the discipline warranted, and assess the costs of the proceeding against the respondent;" and,

(4) The signature of the complainant.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. (intro.), (3) and (4). Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.07 Notice of hearing. (1) A notice of hearing shall be sent to the respondent at least 10 days prior to the hearing, unless for good cause such notice is impossible or impractical, in which case shorter notice may be given, but in no case may the notice be provided less than 48 hours in advance of the hearing.

(2) A notice of hearing to the respondent shall be substantially in the form shown in Appendix I and signed by a disciplinary authority member or an attorney in the division.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. (2) (intro.), Register, February, 1979, No. 278, eff. 3–1–79; r. and recr. Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.08 Service and filing of complaint, notice of hearing and other papers. (1) The complaint, notice of hearing, all orders and other papers required to be served on a respondent may be served by mailing a copy of the paper to the respondent at the last known address of the respondent or by any procedure described in s. 801.14 (2), Stats. Service by mail is complete upon mailing.

(2) Any paper required to be filed with a disciplinary authority may be mailed to the disciplinary authority office or, if an administrative law judge has been designated to preside in the matter, to the administrative law judge and shall be deemed filed on receipt at the disciplinary authority office or by the administrative law judge. An answer under s. RL 2.09, and motions under s. RL 2.15 may be filed and served by facsimile transmission. A document filed by facsimile transmission under this section shall also be mailed to the disciplinary authority. An answer or motion filed by facsimile transmission shall be deemed filed on the first business day after receipt by the disciplinary authority.

History: Cr. Register, October, 1978, No. 274. eff. 11–1–78; am. (2), Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.09 Answer. (1) An answer to a complaint shall state in short and plain terms the defenses to each cause asserted and shall admit or deny the allegations upon which the complainant relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation, the respondent shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. The respondent shall make denials as specific denials of designated allegations or paragraphs but if the respondent intends in good faith to deny only a part or a qualification of an allegation, the respondent shall specify so much of it as true and material and shall deny only the remainder.

(2) The respondent shalt set forth affirmatively in the answer any matter constituting an affirmative defense.

(3) Allegations in a complaint are admitted when not denied in the answer.

(4) An answer to a complaint shall be filed within 20 days from the date of service of the complaint.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. (4), Register, February, 1979, No. 278, eff. 3–1–79; am. (1), (3) and (4), Register. June, 1992, No. 438, eff. 7–1–92.

RL 2.10 Administrative law judge. (1) DESIGNATION. Disciplinary hearings shall be presided over by an administrative law judge employed by the department unless the disciplinary authority designates otherwise. The administrative law judge shall be an attorney in the department designated by the department general counsel, an employe borrowed from another agency pursuant to s. 20.901, Stats., or a person employed as a special project or limited term employe by the department, except that the administrative law judge may not be an employe in the division.

(2) AUTHORITY. An administrative law judge designated under this section to preside over any disciplinary proceeding has the authority described in s. 227.46 (1), Stats. Unless otherwise directed by a disciplinary authority pursuant to s. 227.46 (3), Stats., an administrative law judge presiding over a disciplinary proceeding shall prepare a proposed decision, including findings of fact, conclusions of law, order and opinion, in a form that may be adopted as the final decision in the case.

(3) SERVICE OF PROPOSED DECISION. Unless otherwise directed by a disciplinary authority, the proposed decision shall be served by the administrative law judge on all parties with a notice providing each party adversely affected by the proposed decision with an opportunity to file with the disciplinary authority objections and written argument with respect to the objections. A party adversely affected by a proposed decision shall have at least 10 days from the date of service of the proposed decision to file objections and argument.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; r. and recr. (1), Register, November. 1986, No. 371, eff. 12–1–86; correction in (2) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1988, No. 389; am. Register. June, 1992, No. 438, eff. 7–1–92.

RL 2.11 Prehearing conference. In any matter pending before the disciplinary authority the complainant and the respondent, or their attorneys, may be directed by the disciplinary authority or administrative law judge to appear at a conference or to participate in a telephone conference to consider the simplifica-

tion of issues, the necessity or desirability of amendments to the pleadings, the admission of facts or documents which will avoid unnecessary proof and such other matters as may aid in the disposition of the matter.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. Register. June, 1992, No. 438, eff. 1992.

RL 2.12 Settlements. No stipulation or settlement agreement disposing of a complaint or informal complaint shall be effective or binding in any respect until reduced to writing, signed by the respondent and approved by the disciplinary authority.

History: Cr. Register. October, 1978, **No.** 274, eff. 11–1–78; am. Register, June, 1992, No. 438. eff. 7–1–92.

RL 2.13 Discovery. The person prosecuting the complaint and the respondent may, prior to the date set for hearing, obtain discovery by use of the methods described in ch. 804, Stats., for the purposes set forth therein. Protective orders, including orders to terminate or limit examinations, orders compelling discovery, sanctions provided in s. 804.12, Stats. or other remedies as are appropriate for failure to comply with such orders may be made by the presiding officer.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78.

RL 2.14 Default. If the respondent fails to answer as required by s. RL 2.09 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence. The disciplinary authority may, for good cause, relieve the respondent from the effect of such findings and permit the respondent to answer and defend at any time before the disciplinary authority enters an order or within a reasonable time thereafter.

History: Cr. Register, October. 1978. No. 274. eff. 11–1–78; am. Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.15 Conduct of hearing. (1) PRESIDING OFFICER. The hearing shall be presided over by a member of the disciplinary authority or an administrative law judge designated pursuant to s. RL 2.10.

(2) RECORD. **A** stenographic, electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evidence.

(3) EVIDENCE The complainant and the respondent shall have the right to appear in person or by counsel, to call, examine, and cross–examine witnesses and to introduce evidence into the record.

(4) BRIEFS The presiding officer may require the filing of briefs.

(5) MOTIONS All motions, except those made at hearing, shall be in writing, filed with the presiding officer and a copy served upon the opposing party not later than 5 days before the time specified for hearing the motion.

(6) ADJOURNMENTS. The presiding officer may, for good cause, grant continuances, adjournments and extensions of time.

(7) SUBPOENAS (a) Subpoenas for the attendance of any witness at a hearing in the proceeding may be issued in accordance with s. 885.01, Stats. Service shall be made in the manner provided in s. 805.07(5), Stats. **A** subpoena may command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein.

(b) **A** presiding officer may issue protective orders according to the provision the provisions of s. 805.07, Stats.

(8) LOCATION **OF** HEARING. All hearings shall be held at the offices of the department of regulation and licensing in Madison unless the presiding officer determines that the health or safety of a witness or of a party or an emergency requires that a hearing be held elsewhere.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78, am. (1), (5) and (6), cr. (8), Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.16 Witness fees and costs. Witnesses subpoenaed at the request of the division or the disciplinary authority shall be entitled to compensation from the state for attendance and travel as provided in ch. 885. Stats.

History: **Cr.** Register, October, 1978, No. 274, eff. 11–1–78; am. Register, June. 1992. No. 438, eff. 7–1–92.

RL 2.17 Transcription fees. (1) The fee charged for a transcript of a proceeding under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

(b) If a transcript is prepared by the department, the department shall charge a transcription fee of $1.75 per page and a copying charge of S.25 per page. If 2 or more persons request a transcript, the department shall charge each requester a copying fee of $.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee of $.25 per page.

(2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of a petition of indigency signed under oath.

History: ***Cr.*** Register, October, 1978, No. 274. eff. 11–1–78; ***am.*** (1) Register, May, 1982, **No.** 317, eff. 64–82, **r.** and **recr.** Register. June, 1992, No. 438, eff. 7–1–92; **am.** (1)(b), Register, August, 1993, No. 452, eff. 9–1–93.

RL 2.18 Assessment of costs. (1) The proposed decision of an administrative law judge following hearing shall include a recommendation whether all or part of the costs of the proceeding shall be assessed against the respondent.

(2) If a respondent objects to the recommendation of an administrative law judge that costs be assessed, objections to the assessment of costs shall be filed, along with any other objections to the proposed decision, within the time established for filing of objections.

(3) The disciplinary authority's final decision and order imposing discipline in a disciplinary proceeding shall include a determination whether all or part of the costs of the proceeding shall be assessed against the respondent.

(4) When costs are imposed, the division and the administrative law judge shall file supporting affidavits showing costs incurred within 15 days of the date of the final decision and order. The respondent shall file any objection to the affidavits within **30** days of the date of the final decision and order. The disciplinary authority shall review any objections, along with the affidavits, and affirm or modify its order without a hearing.

History: Cr. Register, June, 1992, No. 438, eff. 7–1–92.

Chapter RL 2
APPENDIX I
NOTICE OF HEARING

THE STATE OF WISCONSIN

To each person named above as a respondent:

You are hereby notified that disciplinary proceedings have been commenced against you before the (#1). The Complaint, which is attached to this Notice, states the nature and basis of the proceeding. This proceeding may result in disciplinary action taken against you by the (#2). This proceeding is a class 2 proceeding as defined in s. 227.01 (3) (b), Wis. Stats.

Within 20 days from the date of service of the complaint, you must respond with a written Answer to the allegations of the Complaint. You may have an attorney help or represent you. The Answer shall follow the general rules of pleading contained in s. RL 2.09. If you do not provide a proper Answer within **20** days, you will be found to be in default, and a default judgment may be entered against you on the bais of the complaint and other evidence and the (#3) may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing.

The original of your Answer should be filed with the Administrative Law Judge who has been designated to preside over this matter pursuant to s. RL **2.10,** who is:

(#4)
Department of Regulation and Licensing
Office of Board Legal Services
P. **O.** Box 8935
Madison, Wisconsin 53708

You should also file a copy of your Answer with the complainant's attorney, who is:

(#5)
Department of Regulation and Licensing
Division of Enforcement
P. O. **Box** 8935
Madison, Wisconsin 53708

A hearing on the matters contained in the Complaint will be held at the time and location indicated below:

Hearing Date, Time and Location

Date: (#6)
Time: (#7)
Location: Room(#8)
1400 East Washington Ave
Madison, Wisconsin

or as soon thereafter as the matter may be heard. The questions to be determined at this hearing are whether the license previously issued to you should be revoked or suspended, whether such license should be limited, whether you should be reprimanded, whether, if authorized by law, a forfeiture should be imposed, or whether any other discipline should be imposed on you. You may be represented by an attorney at the hearing. The legal authority and procedures under which the hearing is to be held is set forth in s. 227.44, Stats., s. (#9), Stats., ch. RL 2, and s. (#10).

If you do not appear for hearing at the time and location set forth above, you will be found to be in default, and a default judgment may be entered against you on the basis of the complaint and other evidence and the (#11) may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing.

If you choose to be represented by an attorney in this proceeding, the attorney is requested to file a Notice of Appearance with the disciplinary authority and the Administrative Law Judge within 20 days of your receiving this Notice.

Dated at Madison, Wisconsin this _____ day of, _____ 20

_____
t of Licensing Authority Member or Att
(#12)

INSERTIONS

1. Disciplinary authority
2. Disciplinary authority
3. Disciplinary authority
4. Administrative Law Judge
5. Complainant's attorney
6. Date of hearing
7. Time **of** hearing
8. Location of hearing
9. Legal authority (statute)
10. Legal authority (administrative code)
11. Disciplinary authority
12. Address and telephone number of person signing the complaint

Chapter RL 3

ADMINISTRATIVE INJUNCTIONS

RL 3.01 Authority. The rules in ch. RL 3 are adopted pursuant to authority in ss. 440.03 (1) and 440.21, Stats.

History: Cr. Register, **July, 1993,** No. **451,** eff. 8–1–93.

RL 3.02 Scope; kinds of proceedings. The rules in this chapter govern procedures in public hearings before the department to determine and make findings as to whether a person has engaged in a practice or used a title without a credential required under chs. 440 to 459, Stats., and for issuance of an administrative injunction.

History: **Cr.** Register, **July.** 1993, No. **451,** eff. **8–1–93.**

RL 3.03 Definitions. In this chapter:

(1) "Administrative injunction" means a special order enjoining a person from the continuation of a practice or use of a title without a credential required under ehs. 440 to 459, Stats.

(2) "Credential" means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 459, Stats.

(3) "Department" means the department of regulation and licensing.

(4) "Division" means the division of enforcement in the department.

(5) "Petition" means a document which meets the requirements of s. RL 3.05.

(6) "Respondent" means the person against whom an administrative injunction proceeding has been commenced and who is named as respondent in a petition.

History: Cr. Register, **July, 1993,** No. **451,** eff. 8–1–93.

RL 3.04 Pleadings to be captioned. All pleadings, notices, orders, and other papers filed in an administrative injunction proceeding shall be captioned: "BEFORE THE DEPARTMENT OF REGULATION **AND** LICENSING and shall be entitled: "IN THE MATTER OF **A** PETITION FOR AN ADMINISTRATIVE INJUNCTION INVOLVMG _____, RESPONDENT."

History: Cr. Register, **July,** 1993, No. **451,** eff. 8–1–93.

RL 3.05 Petition for administrative injunction. A petition for an administrative injunction shall allege that a person has engaged in a practice or used a title without a credential required under chs. 440 to 459, Stats. A petition may be made on information and belief and shall contain:

(1) The name and address of the respondent and the name and address of the attorney in the division who is prosecuting the petition for the division;

(2) A short statement in plain language of the basis for the division's belief that the respondent has engaged in a practice or used a title without a credential required under chs. 440 to 459, Stats., and specifying the statute or rule alleged to have been violated;

(3) A request in essentially the following form: "Wherefore, the division demands that a public hearing be held and that the department issue a special order enjoining the person from the continuation of the practice or use of the title;" and,

(4) The signature of an attorney authorized by the division to sign the petition.

History: Cr. Register, **July,** 1993, No. **451,** eff. **8–1–93.**

RL 3.06 Notice of hearing. (1) A notice of hearing shall be sent to the respondent by the division at least 10 days prior to the hearing, except in the case of an emergency in which shorter notice may be given, but in no case may the notice be provided less than 48 hours in advance of the hearing.

(2) A notice of hearing to the respondent shall be essentially in the form shown in Appendix **I** and signed by an attorney in the division.

History: Cr. Register, **July.** 1993, No. **451, eff.** 8–1–93.

RL 3.07 Service and filing of petition, notice of hearing and other papers. (1) The petition, notice of hearing, all orders and other papers required to be served on a respondent may be served by mailing a copy of the paper to the respondent at the last known address of the respondent or by any procedure described in s. 801.14 (2), Stats. Service by mail is complete upon mailing.

(2) Any paper required to be filed with the department may be mailed to the administrative law judge designated to preside in the matter and shall be deemed filed on receipt by the administrative law judge. An answer under s. RL 3.08, and motions under s. RL 3.14 may be filed and served by facsimile transmission. **A** document filed by facsimile transmission under this section shall also be mailed to the department. An answer or motion filed by facsimile transmission shall be deemed filed on the first business day after receipt by the department.

History: Cr. Register, **July, 1993,** No. **451,** eff. **8–1–93.**

RL 3.08 Answer. (1) An answer to a petition shall state in short and plain terms the defenses to each allegation asserted and shall admit or deny the allegations upon which the division relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation, the respondent shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. The respondent shall make denials as specific denials of designated allegations or paragraphs but if the respondent intends in good faith to deny only a part or to provide a qualification of an allegation, the respondent shall specify so much of it as true and material and shall deny only the remainder.

(2) The respondent shall set forth affirmatively in the answer any matter constituting an affirmative defense.

(3) Allegations in a petition are admitted when not denied in the answer.

(4) An answer to a petition shall be filed within 20 days from the date of service of the petition.

History: **Cr.** Register. **July,** 1993, No. **451, eff.** 8–1–93.

RL 3.09 Administrative law judge. (1) DESIGNATION. Administrative injunction proceedings shall be presided over by an administrative law judge. The administrative law judge shall be an attorney in the department designated by the department general counsel, an employe borrowed from another agency pursuant to s. 20.901, Stats., or a person employed as a special project or limited term employe by the department. The administrative law judge may not be an employe in the division.

(2) AUTHORITY. An administrative law judge designated under this section has the authority described in s. 227.46 (1), Stats. Unless otherwise directed under s. 227.46 (3), Stats., an administrative law judge shall prepare a proposed decision, including findings of fact, conclusions of law, order and opinion, in a form that may be adopted by the department as the final decision in the case.

(3) SERVICE OF *PROPOSED* **DECISION.** The proposed decision shall be served by the administrative law judge on all parties with a notice providing each party adversely affected by the proposed decision with an opportunity to file with the department objections and written argument with respect to the objections. A party adversely affected by a proposed decision shall have at least 10 days from the date of service of the proposed decision to file objections and argument.

History: Cr. Register, July, 1993, No. **451, eff.** 8–1–93.

RL 3.10 Prehearing conference. In any matter pending before the department, the division and the respondent may be directed by the administrative law judge to appear at a conference or to participate in a telephone conference to consider the simplification of issues, the necessity or desirability of amendments to the pleading, the admission of facts or documents which will avoid unnecessary proof and such other matters as may aid in the disposition of the matter.

History: Cr. Register, July, 1993, No. **451, eff. 8–1–93.**

RL 3.11 Settlements. No stipulation or settlement agreement disposing of a petition or informal petition shall be effective or binding in any respect until reduced to writing, signed by the respondent and approved by the department.

History: Cr. Register, July. 1993, No. **451, eff. 8–1–93.**

RL 3.12 Discovery. The division and the respondent may, prior to the date set for hearing, obtain discovery by use of the methods described in ch. 804, Stats., for the purposes set forth therein. Protective orders, including orders to terminate or limit examinations, orders compelling discovery, sanctions provided in s. 804.12, Stats., or other remedies as are appropriate for failure to comply with such orders may be made by the administrative law judge.

Ristory: Cr. Register, July, 1993, No. **451, eff. 8–1–93.**

RL 3.13 Default. If the respondent fails to answer as required by s. RL 3.08 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the department may make findings and enter an order on the basis of the petition and other evidence. The department may, for good cause, relieve the respondent from the effect of the findings and permit the respondent to answer and defend at any time before the department enters an order or within a reasonable time thereafter.

History: Cr. Register, July, 1993, No. 451, **eff. 8–1–93.**

RL 3.14 Conduct Of hearing. (1) ADMINISTRATIVE **LAW** JUDGE. The hearing shall be presided over by an administrative law judge designated pursuant to s. RL 3.09.

(2) RECORD. A stenographic, electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evidence.

(3) EVIDENCE. The division and the respondent shall have the right to appear in person or by counsel, to call, examine, and cross–examine witnesses and to introduce evidence into the record.

(4) BRIEFS. The administrative law judge may require the filing of briefs.

(5) MOTIONS. (a) *How* ***made.*** An application to the administrative law judge for an order shall be by motion which, unless made during a hearing or prehearing conference, shall be in writing, state with particularity the grounds for the order, and set forth the relief or order sought.

(b) *Filing.* **A** motion shall be filed with the administrative law judge and a copy served upon the opposing party not later than 5 days before the time specified for hearing the motion.

(c) *Supporting papers.* Any briefs or other papers in support of a motion, including affidavits and documentary evidence, shall be filed with the motion.

(6) ADJOURNMENTS. The administrative law judge may, for good cause, grant continuances, adjournments and extensions of time.

(7) SUBPOENAS. (a) Subpoenas for the attendance of any witness at a hearing in the proceeding may be issued in accordance with s. 885.01, Stats. Service shall be made in the manner provided in s. *805.07* (5), Stats. **A** subpoena may command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein.

(b) An administrative law judge may issue protective orders according to the provisions of **s.** *805.07,* Stats.

(8) LOCATION **OF** HEARING. All hearings shall be held at the offices of the department in Madison unless the administrative law judge determines that the health or safety of a witness or of a party or an emergency requires that a hearing be held elsewhere.

History: Cr. Register, July, 1993, No. **451, eff. 8–1–93.**

RL 3.15 Witness fees and costs. Witnesses subpoenaed at the request of the division shall be entitled to compensation from the state for attendance and travel as provided in ch. *885,* Stats.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

RL 3.16 Transcription fees. (1) The fee charged for a transcript of a proceeding under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

Note: The State Operational Purchasing Bulletin may be obtained from **the Department** of **Administration, State Bureau** of **Procurement,** 101 E. **Wilson Street, 6th** Floor, **P.O. Box 7867, Madison, Wisconsin 53707–7867.**

(b) If a transcript is prepared by the department, the department shall charge a transcription fee of $1.75 per page and a copying charge of $.25 per page. If 2 or more persons request a transcript, the department shall charge each requester a copying fee of $.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee of $.25 per page.

(2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of an affidavit showing that the person is indigent according to the standards adopted in rules of the state public defender under ch. **977,** Stats.

History: Cr. Register, July, 1993, No. **451, eff. 8–1–93.**

Chapter RL 3

APPENDIX I

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULAITON AND LICENSING

IN THE MATTER OF A PETITION : NOTICE OF
FOR AN ADMINISTRATIVE; HEAFUNG
INJUNCTION INVOLVING :

(#1),: :
Respondent.

NOTICE OF HEARTNG

TO: (#2)

You are hereby notified that a proceeding for an administrative injunction has been commenced against you by the Department of Regulation and Licensing. The petition attached to this Notice states the nature and basis of the proceeding. This proceeding may result in a special order against you under s. 440.21, Stats., enjoining you from the continuation of a practice or use of a title.

A HEARING ON THE MATTERS CONTAINED IN THE PETITION WILL BE HELD A T

Date: (#3) Time: (#4)
Location: Room (#5),
1400 East Washington Avenue
Madison, Wisconsin

or as soon thereafter as the matter may be heard.
The questions to be determined at this hearing are whether (#6).

Within 20 days from the date of service of the Notice, you must respond with a written Answer to the allegations of the Petition. You may have an attorney help or represent you. Your Answer must follow the rules of pleading in s. RL 3.08 of the Wisconsin Administrative Code. File your Answer with the Administrative Law Judge for this matter who is:

(#7), Department of Regulation and Licensing, Office of Board Legal Services,
P.O. Box 8935,
Madison, Wisconsin 53708

Please file a copy of your answer with the division's attorney, who is:

(#8), Division of Enforcement,
Department of Regulation and Licensing,
P.O. Box 8935,
Madison, Wisconsin 53708

If you do not provide a proper Answer within 20 days or do not appear for the hearing, you will be found to be in default and a special order may be entered against you enjoining you from the continuation of a practice or use of a title. **If** a special order is issued as a result of this proceeding and thereafter you violate the special order, you may be required to forfeit not more than $10,000 for each offense.

You may be represented by an attorney at the hearing. This proceeding is a class 2 proceeding as defined in **s.** 227.01 (3) (b), Stats. If you choose to be represented by an attorney in this proceeding, the attorney is requested to file a Notice of Appearance with the Administrative Law Judge and the division within 20 days after you receive this Notice.

The legal authority and procedures under which the hearing is to be held are set forth in ss. 227.21, 440.44, (#9), Stats., and ch. RL 3, Wis. Admin. Code.

Dated at Madison, Wisconsin this _____ day of ____ 20__ .

(...#10...), Attorney

INSERTIONS
1. Respondent
2. Respondent with address
3. Date of hearing
4. Time of hearing
5. Place of hearing
6. Issues for hearing
7. Administrative Law Judge
8. Division of Enforcement attorney
9. Legal authority (statute)
10. Division of Enforcement attorney

Chapter RL 4

DEPARTMENT APPLICATION PROCEDURES AND APPLICATION FEE POLICIES

RL 4.01 Authorization. The following rules are adopted by the department of regulation and licensing pursuant to ss. 440.05, 440.06 and 440.07, Stats.

History: Cr. Register, October, **1978.** No. **274,** eff. **11-1-78; am. Register, July, 1996, No. 487, eff. 8-1-96.**

RL 4.02 Definitions. (1) "Applicant" means a person who applies for a license, permit, certificate or registration granted by the department or a board.

(2) "Authority" means the department or the attached examining board or board having authority to grant the credential for which an application has been filed.

(3) "Board" means the board of nursing and any examining board attached to the department.

(4) "Department" means the department of regulation and licensing.

(5) "Examination" means the written and practical tests required of an applicant by the authority.

(6) "Service provider" means a party other than the department or board who provides examination services such as application processing, examination products or administration of examinations.

History: Cr. Register. October, **1978,** No. **274,** eff. **1 1-1-7X; renum. (I) to (4) to be (4), (3), (1), (5) and am. (5), cr. (2) and (6), Register, July, 1996, No. 487, eff. 8–1–96.**

RL 4.03 Time for review and determination of credential applications. (1) TIME LIMITS. An authority shall review and make a determination on an original application for a credential within 60 business days after a completed application is received by the authority unless a different period for review and determination is specified by law.

(2) COMPLETED APPLICATIONS. An application is completed when all materials necessary to make a determination on the application and all materials requested by the authority have been received by the authority.

(3) EFFECT OF DELAY. **A** delay by an authority in making a determination on an application within the time period specified in this section shall be reported to the permit information center under s. 227.1 16, Stats. Delay by an authority in making a determination on **an** application within the time period specified in this section does not relieve any person from the obligation to secure approval from the authority nor affect in any way the authority's responsibility to interpret requirements for approval and to grant or deny approval.

History: Cr. Register, August, **1992.** No. **440,** eff. **9-1-92; renum. from RL 4.06 and am., Register, July, 1996, No. 487, eff. 8-1-96.**

RL 4.04 Fees for examinations, reexaminations and proctoring examinations. (1) EXAMINATION FEE SCHEDULE. A list of all current examination fees may be obtained at no charge from the Office of Examinations, Department of Regulation and Licensing, 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708.

(3) EXPLANATION OF PROCEDURES FOR SETTING EXAMINATION FEES. (a) Fees for examinations shall be established under s. 440.05 (1) (b), Stats., at the department's best estimate of the actual cost of preparing, administering and grading the examination or obtaining and administering an approved examination from a service provider.

(b) Examinations shall be obtained from a service provider through competitive procurement procedures described in ch. Adm 7.

(c) Fees for examination services provided by the department shall be established based on an estimate of the actual cost of the examination services. Computation of fees for examination services provided by the department shall include standard component amounts for contract administration services, test development services and written and practical test administration services.

(d) Examination fees shall be changed as needed to reflect changes in the actual costs to the department. Changes to fees shall be implemented according to par. (e).

(e) Examination fees shall be effective for examinations held 45 days or more after the date of publication of a notice in application forms. Applicants who have submitted fees in an amount less than that in the most current application form shall pay the correct amount prior to administration of the examination. Overpayments shall be refunded by the department. Initial credential fees shall become effective on the date specified by law.

(4) REEXAMINATION OF PREVIOUSLY LICENSED INDIVIDUALS. Fees for examinations ordered as part of a disciplinary proceeding or late renewal under s. 440.08 (3) (b), Stats., are equal to the fee set for reexamination in the most recent examination application form, plus $10 application processing.

(5) PROCTORING EXAMINATIONS FOR OTHER STATES. (a) Examinations administered by an authority of the state may be proctored for persons applying for credentials in another state if the person has been determined eligible in the other state and meets this state's application deadlines. Examinations not administered by an authority of the state may only be proctored for Wisconsin residents or licensees applying for credentials in another state.

(b) Department fees for proctoring examinations of persons who arc applying for a credential in another state are equal to the cost of administering the examination to those persons, plus any additional cost charged to the department by the service provider.

History: Cr. Register, October, **1978.** No. **274,** eff. **11-1-78; r.** and **recr.** Register, May, **1986.** No. **365,** eff. **6–1–86; am.** Register, December, **1986,** No. **372,** eff. **1–1–87; am.** Register, September, **1987. No. 381,** eff. **10-1-87; am. (3),** Register, September, **1988,** No. **393,** eff. 10–1–88; am. (3). Register. September, **1990,** No. **417,** eff. **10–1–90; r.** and **recr. (1)** to **(3), cr. (4),** [illegible]. Figure and **am.** Register, April. **1992.** No, **436,** eff. **5-1-92; am. (4)** Figure, cr. (5), Register, **July,** 1993, No. 451, eff. **8-1-93; r.** and **recr.** Register, November, **1993,** No. **455,** eff. **12-1-93; r. (2), am. (3) (a), (b), (c), (e), (4). (5), Register, July, 1996, No. 487. eff. 8-1-96.**

RL 4.05 Fee for test review. (1) The fee for supervised review of examination results by a failing applicant which is conducted by the department is $28.

(2) The fee for review of examination results by a service provider is the fee established by the service provider.

History: Cr. Register, April, **1992,** No. **436,** eff. **5-1-92; am. Register, July, 1996. No. 487, eff. 8-1-96.**

RL 4.06 Refunds. (1) A refund of all but $10 of the applicant's examination fee and initial credential fee submitted to the department shall be granted if any of the following occurs:

(a) An applicant is found to be unqualified for an examination administered by the authority.

(b) An applicant is found to bc unqualified for a credential for which no examination is required.

(c) An applicant withdraws an application by written notice to the authority at least 10 days in advance of any scheduled examination.

(d) An applicant who fails to take an examination administered by the authority either provides written notice at least 10 days in advance of the examination date that the applicant is unable to take the examination, or if written notice was not provided, submits a written explanation satisfactory to the authority that the applicant's failure to take the examination resulted from extreme personal hardship.

(2) An applicant eligible for a refund may forfeit the refund and choose instead to take an examination administered by the authority within 18 months of the originally scheduled examination at no added fee.

(3) An applicant who misses an examination as a result of being called to active military duty shall receive a full refund. The applicant requesting the refund shall supply a copy of the call up orders or a letter from the commanding officer attesting to the call up.

(4) Applicants who pay fees to service providers other than the department are subject to the refund policy established by the service provider.

History: Cr. Register, October. 1978, No. 274. eff. 11–1–78; **am. (2)** (intro.), **Register, May, 1986, No. 365, eff. 6–1–86; am.** (1) **and (2)** (intro.), renum. (2) (c) **and (3)** to **be (3) and** (4), **cr.** (5), **Register, September, 1987, No. 381, eff.** 10–1–87; r. **and recr.** (1) **and** (4), **Register. April, 1992, No. 436,** eff. **5–1–92; r.** (2), **renum. (3) to (5) to** be **(2) to** (4), **Register. July, 1993, No. 451,** eff. **8–1–93; renum. from RL 4.03 and am., Register, July, 1996, No. 487, eff. 8–1–96.**

Chapter RL 6

SUMMARY SUSPENSIONS

RL 6.01 Authority and intent. **(1)** This chapter is adopted pursuant to authority in ss. 227.11 (2) (a) and 440.03 (1), Stats., and interprets s. 227.51 (3), Stats.

(2) The intent of the department in creating this chapter is to specify uniform procedures for summary suspension of licenses, permits, certificates or registrations issued by the department or any board attached to the department in circumstances where the public health, safety or welfare imperatively requires emergency action.

History: Cr. Register, May, 1988, No. 389, eff. 6-1–88.

RL 6.02 Scope. This chapter governs procedures in all summary suspension proceedings against licensees before the department or any board attached to the department. To the extent that this chapter is not in conflict with s. 448.02 (4), Stats., the chapter shall also apply in proceedings brought under that section.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-48.

RL 6.03 Definitions. In this chapter:

(1) "Board" means the bingo control board, real estate board or any examining board attached to the department.

(2) ''Department" means the department of regulation and licensing.

(3) "Disciplinary proceeding" means a proceeding against one or more licensees in which a licensing authority may determine to revoke or suspend a license, to reprimand a licensee, or to limit a license.

(4) "License" means any license, permit, certificate, or registration granted by a board or the department or a right to renew a license, permit, certificate or registration granted by a board or the department.

(5) "Licensee" means a person, partnership, corporation or association holding any license.

(6) "Licensing authority" means the bingo control board, real estate board or any examining board attached to the department, the department for licenses granted by the department, or one acting under a board's or the department's delegation under s. RL 6.11,

(7) "Petitioner" means the division of enforcement in the department.

(8) "Respondent" means a licensee who is named as respondent in a petition for summary suspension.

History: Cr Register, May, 1988. No 389, eff 6-1-88

RL 6.04 Petition for summary suspension. **(1)** A petition for a summary suspension shall state the name and position of the person representing the petitioner, the address of the petitioner, the name and licensure status of the respondent, and an assertion of the facts establishing that the respondent has engaged in or is likely to engage in conduct such that the public health, safety or welfare imperatively requires emergency suspension of the respondent's license.

(2) A petition for a summary suspension order shall be signed upon oath by the person rcprescnting the petitioner and may be made on information and belief.

(3) The petition shall be presented to the appropriate licensing authority.

History: Cr. Register. May, 1988, No. 389. eff. 6-1-88.

RL 6.05 Notice of petition to respondent. Prior to the presenting of the petition, the petitioner shall give notice to the respondent or respondent's attorney of the time and place when the petition will be presented to the licensing authority. Notice may be given by mailing a copy of the petition and notice to the last-known address of the respondent as indicated in the records of the licensing authority as provided in s. 440.11 (2), Stats. as created by 1987 Wis. Act 27. Notice by mail is complete upon mailing. Notice may also be given by any procedure described in s. 801.11, Stats.

History: Cr. Register, May, 1988, No. 389. eff. 6-1-88.

RL 6.06 Issuance of summary suspension order. **(1)** If the licensing authority finds that notice has been given under s. RL 6.05 and finds probable cause to believe that the respondent has engaged in or is likely to engage in conduct such that the public health, safety or welfare imperatively requires emergency suspension of the respondent's license, the licensing authority may issue an order for summary suspension. The order may be issued at any time prior to or subsequent to the commencement of a disciplinary proceeding under s. RL 2.04.

(2) The petitioner may establish probable cause under sub. (1) by affidavit or other evidence.

(3) The summary suspension order shall be effective upon service under s. RL 6.08, or upon actual notice of the summary suspension order to the respondent or respondent's attorney, whichever is sooner, and continue through the effective date of the final decision and order made in the disciplinary proceeding against the respondent, unless the license is restored under s. RL 6.09 prior to a formal disciplinary hearing.

History: Cr Register, May, 1988, No 389, eff. 6-1-88.

RL 6.07 Contents of summary suspension order. The summary suspension order shall include the following:

(1) A statement that the suspension order is in effect and continues until the effective date of a final order and decision in the disciplinary proceeding against the respondent, unless otherwise ordered by the licensing authority;

(2) Notification of the respondent's right to request a hearing to show cause why the summary suspension order should not be continued;

(3) The name and address of the licensing authority with whom a request for hearing should be filed;

(4) Notification that the hearing to show cause shall be scheduled for hearing on a date within 20 days of receipt by the licensing authority of respondent's request for hearing, unless a later time is requested by or agreed to by the respondent;

(5) The identification of all witnesses providing evidence at the time the petition for summary suspension was presented and identification of the evidence used as a basis for the decision to issue the summary suspension order;

(6) The manner in which the respondent or the respondent's attorney was notified of the petition for summary suspension; and

(7) A finding that the public health, safety or welfare imperatively requires emergency suspension of the respondent's license.

History: Cr. Register, May, 1988. No. 389, eff. 6-1-88.

RL 6.08 Service of summary suspension order. An order of summary suspension shall be served upon the respondent in the manner provided in s. 801.11, Stats., for service of summons.

History: Cr. Register, May, 1988, No 389, eff. 6-1-88.

RL 6.09 Hearing to show cause. (1) The respondent shall have the right to request a hearing to show cause why the summary suspension order should not be continued until the effective date of the final decision and order in the disciplinary action against the respondent.

(2) The request for hearing to show cause shall be filed with the licensing authority which issued the summary suspension order. The hearing shall be scheduled and heard promptly by the licensing authority but no later than **20** days after the filing of the request for hearing with the licensing authority, unless a later time is requested by or agreed to by the licensee.

(3) At the hearing to show cause the petitioner and the respondent may testify, call, examine and cross-examine witnesses, and offer other evidence.

(4) At the hearing to show cause the petitioner has the burden to show by a preponderance of the evidence why the summary suspension order should be continued.

(5) At the conclusion of the hearing to show cause the licensing authority shall make findings and an order. If it is determined that the summary suspension order should not be continued, the suspended license shall be immediately restored.

History: Cr Register, May, 1988, No. 389, eff. 6-1-88

RL 6.10 Commencement of disciplinary proceeding. (1) A notice of hearing commencing a disciplinary proceeding under s. RL 2.06 against the respondent shall be issued no later than I0 days following the issuance of the summary suspension order or the suspension shall lapse on the tenth day following issuance of the summary suspension order. The formal disciplinary proceeding shall be determined promptly.

(2) If at any time the disciplinary proceeding is not advancing with reasonable promptness, the respondent may make a motion to the hearing officer or may directly petition the appropriate board, or the department, for an order granting relief.

(3) If it is found that the disciplinaryproceeding is not advancing with reasonable promptness, and the delay is not as a result of the conduct of respondent or respondent's counsel, a remedy, as would be just, shall be granted including:

(a) An order immediately terminating the summary suspension; or

(b) An order compelling that the disciplinary proceeding be held and determined by a specific date.

History: Cr. Register, May, 1988, No. 389. eff. 6-1-88.

RL 6.11 Delegation. (1) A board may by a two-thirds vote:

(a) Designate under **s. 227.46**(1), Stats., a member of the board or an employe of the department to rule on a petition for summary suspension, to issue a summary suspension order, and to preside over and rule in a hearing provided for in s. RL 6.09; or

(b) Appoint a panel of no less than two-thirds of the membership of the board to rule on a petition for summary suspension, to issue a summary suspension order, and to preside over and rule in a hearing provided for in s. RL 6.09.

(2) In matters in which the department is the licensing authority, the department secretary or the secretary's designee shall rule on a petition for summary suspension, issue a summary suspension order, and preside over and rule in a hearing provided for in s. RL 6.09.

(3) Except as provided in s. **227.46**(3), Stats., a delegation of authority under subs. (1) and **(2)** may be continuing.

History: Cr. Register. May, 1988, No. 389, eff. 6-1-88.

Chapter RL 7

IMPAIRED PROFESSIONALS PROCEDURE

RL 7.01 Authority and intent. (1) The rules in this chapter are adopted pursuant to authority in ss. 15.08 (5) (b), 51.30. 146.82, 227.11 and 440.03, Stats.

(2) The intent of the department in adopting rules in this chapter is to protect the public from credential holders who are impaired by reason of their abuse of alcohol or other drugs. This goal will be advanced by providing an option to the formal disciplinary process for qualified credential holders committed to their own recovery. This procedure is intended to apply when allegations are made that a credential holder has practiced a profession while impaired by alcohol or other drugs or when a credential holder contacts the department and requests to participate in the procedure. It is not intended to apply in situations where allegations exist that a credential holder has committed violations of law, other than practice while impaired by alcohol or other drugs, which are substantial. The procedure may then be utilized in selected cases to promote early identification of chemically dependent professionals and encourage their rehabilitation. Finally, the department's procedure does not seek to diminish the prosecution of serious violations but rather it attempts to address the problem of alcohol and other drug abuse within the enforcement jurisdiction of the department.

(3) In administering this program, the department intends to encourage board members to share professional expertise so that all boards in the department have access to a range of professional expertise to handle problems involving impaired professionals.

History: Cr. **Register. January,** 1991, **No. 421,** eff. 2–1–91, **am** (2), **Register, July, 1996, No 487, eff. 8–1–96**

RL 7.02 Definitions. In this chapter:

(1) "Board" means any examining board or affiliated credentialing board attached to the department and the real estate board.

(2) "Board liaison" means the board member designated by the board as responsible for approving credential holders for the impaired professionals procedure under s. RL 7.03, for monitoring compliance with the requirements for participation under s. RL 7.04, and for performing other responsibilities delegated to the board liaison under these rules.

(2a) "Coordinator" means a department employee who coordinates the impaired professionals procedure.

(2b) "Credential holder" means a person holding any license, permit, certificate or registration granted by the department or any board.

(3) "Department" means the department of regulation and licensing.

(4) "Division" means the division of enforcement in the department.

(5) "Informal complaint" means any written information submitted by any person to the division, department or any board which requests that a disciplinary proceeding be commenced against a credential holder or which alleges facts, which if true, warrant discipline. "Informal complaint" includes requests for disciplinary proceedings under s. 440.20, Stats.

(6) "Medical review officer" means a medical doctor or doctor of osteopathy who is **a** licensed physician and who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with an individual's medical history and any other relevant biomedical information.

(7) "Procedure" means the impaired professionals procedure.

(8) "Program" means any entity approved by the department to provide the full scope of drug testing services for the department.

History: Cr. **Register, January, 1991, No. 421, eff. 2–1–91; am.** (1), (2), (5), cr. (2a), (2b), r. (6), **Register, July, 1996,** No. **487, eff. 8–1–96; cr. (6) and (8), Register, January, 2001, No. 541, eff. 2–1–01.**

RL 7.03 Referral to and eligibility for the procedure. (1) All informal complaints involving allegations of impairment due to alcohol or chemical dependency shall be screened and investigated pursuant to s. RL 2.035. After investigation, informal complaints involving impairment may be referred to the procedure and considered for eligibility as an alternative to formal disciplinary proceedings under ch. RL 2.

(2) A credential holder who has been referred to the procedure and considered for eligibility shall be provided with an application for participation, a summary of the investigative results in the form of a draft statement of conduct to be used as a basis for the statement of conduct under s. RL 7.05 (1) (a), and a written explanation of the credential holder's options for resolution of the matter through participation in the procedure or through the formal disciplinary process pursuant to ch. RL 2.

(3) Eligibility for the procedure shall be determined by the board liaison and coordinator who shall review all relevant materials including investigative results and the credential holder's application for participation. Eligibility shall be determined upon criteria developed by each credentialing authority which shall include at a minimum the credential holder's past or pending criminal, disciplinary or malpractice record, the circumstances of the credential holder's referral to the department, the seriousness of other alleged violations and the credential holder's prognosis for recovery. The decision on eligibility shall be consistent with the purposes of these procedures as described in s. RL 7.01 (2). The board liaison shall have responsibility to make the determination of eligibility for the procedure.

(4) Prior to the signing of an agreement for participation the credential holder shall obtain a comprehensive assessment for chemical dependency from a treatment facility or individual therapist approved under s. RL 7.06. The credential holder shall arrange for the treatment facility or individual therapist to file a copy of its assessment with the board liaison or coordinator. The assessment shall include a statement describing the credential holder's prognosis for recovery. The board liaison and the credential holder may agree to waive this requirement.

(5) If a credential holder is determined to be ineligible for the procedure, the credential holder shall be referred to the division for prosecution.

(6) A credential holder determined to be ineligible for the procedure by the board liaison or the department may, within 10 days of notice of the determination, request the credentialing authority to review the adverse determination.

History: Cr. Register, January, **1991.** No. 421, **eff.** 2–1–91; am. **(2)** to (6), **Register,** July, **1996.** No. **487,** eff. 8–1–96.

RL 7.04 Requirements for participation. (1) A credential holder who participates in the procedure shall:

(a) Sign an agreement for participation under s. RL 7.05.

(b) Remain free of alcohol, controlled substances, and prescription drugs, unless prescribed for a valid medical purpose.

(c) Timely enroll and participate in a program for the treatment of chemical dependency conducted by a facility or individual therapist approved pursuant to s. RL 7.06.

(d) Comply with any treatment recommendations and work restrictions or conditions deemed necessary by the board liaison or department.

(e) Submit random monitored blood or urine samples for the purpose of screening for alcohol or controlled substances provided by a drug testing program approved by the department under s. RL 7.11, as required.

(f) Execute releases valid under state and federal law in the form shown in Appendix I to allow access to the credential holder's counseling. treatment and monitoring records.

(g) Have the credential holder's supervising therapist and work supervisors file quarterly reports with the coordinator.

(h) Notify the coordinator of any changes in the credential holder's employer within 5 days.

(i) File quarterly reports documenting the credential holder's attendance at meetings of self–help groups such as alcoholics anonymous or narcotics anonymous.

(2) If the board liaison or department determines, based on consultation with the person authorized to provide treatment to the credential holder or monitor the credential holder's enrollment or participation in the procedure, or monitor any drug screening requirements or restrictions on employment under sub. (1), that a credential holder participating in the procedure has failed to meet any of the requirements set under sub. (1), the board liaison may request that the board dismiss the credential holder from the procedure. The board shall review the complete record in making this determination. If the credential holder is dismissed the matter shall be referred to the division.

(3) If a credential holder violates the agreement and the board does not dismiss and refer the credential holder to the division, then a new admission under s. RL 7.05 (1) (a) shall be obtained for violations which are substantiated.

History: *Cr.* **Register,** January, **1991.** No. **421. eff. 2–1–91,** am. **Register, July, 1996,** No. **487, eff. 8–1–96. am. (1) (e), Register, January, 2001, No. 541, eff. 2–1-01.**

RL 7.05 Agreement for participation. (1) The agreement for participation in the procedure shall at a minimum include:

(a) A statement describing conduct the credential holder agrees occurred relating to participation in the procedure and an agreement that the statement may be used as evidence in any disciplinary proceeding under ch. RL **2.**

(b) An acknowledgement by the credential holder of the need for treatment for chemical dependency;

(c) An agreement to participate at the credential holder's expense in an approved treatment regimen.

(d) An agreement to submit to random monitored drug screens provided by a drug testing program approved by the department under s. RL 7.11 at the credential holder's expense, if deemed necessary by the board liaison.

(e) An agreement to submit to practice restrictions at any time during the treatment regimen as deemed necessary by the board liaison.

(f) An agreement to furnish the coordinator with signed consents for release of information from treatment providers and employers authorizing the release of information to the coordinator and board liaison for the purpose of monitoring the credential holder's participation in the procedure.

(g) An agreement to authorize the board liaison or coordinator to release information described in pars. (a), (c) and (e), the fact that a credential holder has been dismissed under s. RL 7.07 (3) (a) or violated terms of the agreement in s. RL 7.04 (1) (b) to (e) and (h) concerning the credential holder's participation in the procedure to the employer, therapist or treatment facility identified by the credential holder and an agreement to authorize the coordinator to release the results of random monitored drug screens under par. (d) to the therapist identified by the credential holder.

(h) An agreement to participate in the procedure for a period of time as established by the board.

(2) The board liaison may include additional requirements for an individual credential holder, if the circumstances of the informal complaint or the credential holder's condition warrant additional safeguards.

(3) The board or board liaison may include a promise of confidentiality that all or certain records shall remain closed and not available for public inspection and copying.

History: Cr. Register, January, **1991,** No. **421. eff. 2–1–91; am.** (1) (a) to **(g)** and (2), **Register, July, 1996,** No. **487, eff.** 8–1–96; **am. (1) (d), Register, January, 2001, No. 541, eff. 2–1–01.**

RL 7.06 Standards for approval of treatment facilities or individual therapists. (1) The board or board liaison shall approve a treatment facility designated by a credential holder for the purpose of participation in the procedure if:

(a) The facility is certified by appropriate national or state certification agencies.

(b) The treatment program focus at the facility is on the individual with drug and alcohol abuse problems.

(c) Facility treatment plans and protocols are available to the board liaison and coordinator.

(d) The facility, through the credential holder's supervising therapist, agrees to file reports as required, including quarterly progress reports and immediate reports if a credential holder withdraws from therapy, relapses, or is believed to be in an unsafe condition to practice.

(2) As an alternative to participation by means of a treatment facility, a credential holder may designate **an** individual therapist for the purpose of participation in the procedure. The board liaison shall approve an individual therapist who:

(a) Has credentials and experience determined by the board liaison to be in the credential holder's area of need.

(b) Agrees to perform an appropriate assessment of the credential holder's therapeutic needs and to establish and implement a comprehensive treatment regimen for the credential holder.

(c) Forwards copies of the therapist's treatment regimen and office protocols to the coordinator.

(d) Agrees to file reports as required to the coordinator, including quarterly progress reports and immediate reports if a credential holder withdraws from therapy, relapses, or is believed to be in an unsafe condition to practice.

(3) If a board liaison does not approve a treatment facility or therapist as requested by the credential holder, the credential holder may, within 10 days of notice of the determination, request the board to review the board liaison's adverse determination.

History: Cr. Register, January, **1991.** No. **421, eff. 2–1–91;** am. **Register, July, 1996,** No. **487: eff. 8–1–96; r. (1) (d) and (2) (d), renum. (1) (e) and (2) (e) to be (1) (d) and (2) (d) and am., Register, January, 2001, No. 541, eff. 2–1-01.**

RL 7.07 Intradepartmental referral. (1) A credential holder who contacts the department and requests to participate in the procedure shall be referred to the board liaison and the coordinator for determination of acceptance into the procedure.

(2) The division may refer individuals named in informal complaints to the board liaison for acceptance into the procedure.

(3) The board liaison may refer cases involving the following to the division for investigation or prosecution:

(a) Credential holders participating in the procedure who arc dismissed for failure to meet the requirements of their rehabilitation program or who otherwise engage in behavior which should be referred to prevent harm to the public.

(b) Credential holders who apply and who are determined to be ineligible for the procedure where the board liaison is in possession of information indicating a violation of law.

(c) Credential holders who do not complete an agreement for participation where the board liaison is in possession of information indicating a violation of law.

(d) Credential holders initially referred by the division to the board liaison who fail to complete an agreement for participation.

History: Cr. Register, **January,** 1991, No. 421. eff. 2–1–91; **am.** (1), **(3) (a)** to **(d),** Register, **July,** 1996, No. 487, eff. 8-1–96.

RL 7.08 Records. (1) CUSTODIAN. All records relating to the procedure including applications for participation, agreements for participation and reports of participation shall be maintaincd in the custody of the department secretary or the secretary's designee.

(2) AVAILABILITY OF PROCEDURE RECORDS FOR PUBLIC INSPECTION. Any requests to inspect procedure records shall be made to the custodian. The custodian shall evaluate each request on a case by case basis using the applicable law relating to open records and giving appropriate weight to relevant factors in order to determine whether public interest in nondisclosure outweighs the public interest in access to the records, including the reputational interests of the credential holder, the importance of confidentiality to the functional integrity of the procedure, the existence of any pledge of confidentiality, statutory or common law rules which accord a status of confidentiality to the records and the likelihood that release of the records will impede an investigation.

(3) TREATMENT RECORDS. Treatment records concerning individuals who are receiving or who at any time have received services for mental illness, developmental disabilities, alcoholism, or drug dependence which are maintained by the department, by county departments under s. **51.42** or **51.437,** Stats., and their staffs and by treatment facilities are confidential under **s.** 51.30, Stats., and shall not be made available for public inspection.

(4) PATIENT HEALTH CARE RECORDS. Patient health care records are confidential under s. **146.82,** Stats., and shall not be made available to the public without the informed consent of the patient or of a person authorized by the patient or as provided under s. **146.82(2),** Stats.

History: Cr. Register, **January,** 1991, No. 421, eff. 2–1–91; am. **(2).** Register, **July,** 1996, No. 487, eff. 8-1–96.

RL 7.09 Report. The board liaison or coordinator shall report on the procedure to the board at least twice a year and if requested to do so by a board.

History: Cr. Register, **January,** 1991, No. 421, eff. 2–1–91; **am.** Register, **July,** 1996, No. 487. eff. 8-1–96.

RL 7.10 Applicability of procedures to direct licensing by the department. This procedure may be used by the department in resolving complaints against persons licensed directly by the department if the department has authority to discipline the credential holder. In such cases, the department secretary shall have the authority and responsibility of the "board" as the term is used in the procedure and shall designate an employee to perform the responsibilities of the "board liaison."

History: Cr. Register, **January.** 1991, No. 421, eff. 2–1–91; am. Register, **July,** 1996, No. 487, eff. 8–1–96.

RL 7.11 Approval of drug testing programs. The department shall approve drug testing programs for use by credential holders who participate in drug and alcohol monitoring programs pursuant to agreements between the department or boards and credential holders. or pursuant to disciplinary orders. To be approved as a drug testing program for the department, programs shall satisfactorily meet all of the following standards in the areas of program administration, collection site administration, laboratory requirements and reporting requirements:

(1) Program administration requirements are:

(a) The program shall enroll participants by setting up an account, establishing a method of payment and supplying preprinted chain–of–custody forms.

(b) The program shall provide the participant with the address and phone number of the nearest collection sites and shall assist in locating a qualified collection site when traveling outside the local area.

(c) Random selection of days when participants shall provide specimens shall begin upon enrollment and the program shall notify designated department staff that selection has begun.

(d) The program shall maintain a nationwide 800 number or an internet website that is operational **24** hours per day, **7** days per week to inform participants of when to provide specimens.

(e) The program shall maintain and make available to the department through an internet website data that are updated on a daily basis verifying the date and time each participant was notified after random selection to provide a specimen, the date, time and location each specimen was collected, the results of drug screen and whether or not the participant complied as directed.

(f) The program shall maintain internal and external quality of test results and other services.

(g) The program shall maintain the confidentiality of participants in accordance with s. **146.82,** Stats.

(h) The program shall inform participants of the total cost for each drug screen including the cost for program administration, collection, transportation, analysis, reporting and confirmation. Total cost shall not include the services of a medical review officer.

(i) The program shall immediately report to the department if the program, laboratory or any collection site fails to comply with this section. The department may remove a program from the approved list if the program fails to comply with this section.

(j) The program shall make available to the department experts to support a test result for **5** years after the test results are released to the department.

(k) The program shall not sell or otherwise transfer or transmit names and other personal identification information of the participants to other persons or entities without permission from the department. The program shall not solicit from participants presently or formerly in the monitoring program or otherwise contact participants except for purposes consistent with administering the program and only with permission from the department.

(L) The program and laboratory shall not disclose to the participant or the public the specific drugs tested.

(2) Collection site administration requirements are:

(a) The program shall locate, train and monitor collection sites for compliance with the U.S. department of transportation collection protocol under **49** CFR **40.**

(b) The program shall require delivery of specimens to the laboratory within **24** hours of collection.

(3) Laboratory requirements are:

(a) The program shall utilize a laboratory that is certified by the U.S. department of health and human services, substance abuse and mental health services administration under 49 CFR 40. If the laboratory has had adverse or corrective action. the department shall cvaluatc the laboratory's compliance on a case by case basis.

(h) The program shall utilize a laboratory capable of analyzing specimens for drugs specified by the department.

(c) Testing of specimens shall be initiated within 48 hours of pickup by courier.

(d) **All** positive drug screens shall be confirmed utilizing gas chromatography in combination with mass spectrometry, mass spectrometry, or another approved method.

(e) The laboratory shall allow department personnel to tour facilities where participant specimens are tested.

(4) The requirements for reporting of results are:

(a) The program shall provide results of each specimen to designated department personnel within 24 hours of processing.

(b) The program shall inform designated department personnel of confirmed positive test results on the same day the test results are confirmed or by the next business day if the results are confirmed after hours, on the weekend or on a state or federal holiday.

(c) The program shall fax, e–mail or electronically transmit laboratory copies of drug test results at the request of the department.

(d) The program shall provide a medical review officer upon request and at the expense of the participant, to review disputed positive test results.

(e) The program shall provide chain–of-custody transfer of disputed specimens to an approved independent laboratory for retesting at the request of the participant or the department.

History: Cr. Register, January, 2001, No. 541, eff. 2–1-01.

Chapter RL 7

APPENDIX I

CONSENT FOR RELEASE OF MFORMATJON

I, (#1), hereby authorize (#2) to provide the board liaison for the Department of Regulation and Licensing Impaired Professionals Procedure, P.O. Box 8935, Madison, Wisconsin 53708, or persons designated by the board liaison who are directly involved in administration of the procedure, with (#3). I further authorize (#4) to discuss with the board liaison or the board liaison's designee any matter relating to the records provided and to allow the board liaison or the board liaison's designee to examine and copy any records or information relating to me.

I hereby also authorize the board liaison or the board liaison's designee to provide (#5) with copies of any information provided to the board liaison pursuant to this consent for release of information authorizing the release of information to the board liaison from those persons and institutions.

In the event of my dismissal from the lmpaired Professionals Procedure, I hereby also authorize the board liaison or the board liaison's designee to provide the Division of Enforcement with the results of any investigation conducted in connection with my application to participate in the Impaired Professionals Procedure and with any documentation, including patient health care records, evidencing my failure to meet participation requirements.

This consent for release of information is being made for the purposes of monitoring my participation in the Impaired Professionals Procedure, and any subsequent procedures before the Wisconsin (#6); and for the further purpose of permitting exchange of information between the board liaison or the board liaison's designee and persons or institutions involved in my participation in the Impaired Professionals Procedure where such exchange is necessary in the furtherance of my treatment or to provide information to the Division of Enforcement in the event of my dismissal from the Impaired Professionals Procedure.

Unless revoked earlier, this consent is effective until (#7). I understand that I may revoke this consent at any time and that information obtained as a result of this consent may be used after the above expiration date or revocation. A reproduced copy of this consent form shall be as valid as the original.

I understand that should I fail to execute this consent for release of information, I shall be ineligible to participate in the Impaired Professionals Procedure. I also understand that should I revoke this consent prior to completion of my participation in the Impaired Professionals Procedure, I will be subject to dismissal from the procedure.

I understand that the recipient of information provided pursuant to this Consent for Release of Information is not authorized to make any further disclosure of the information without my specific written consent, or except as otherwise permitted or required by law.

Dated this _____ day of _____, 19___.

_____

Signature of IPP Participant Participant's Date of Birth

INSERTIONS

1. Participant

2. Persons and institutions provided with releases for provision of information to the department

3. Examples: Drug and alcohol treatment records
Mental health/psychiatric treatment records
Personnel records; work records
Results of blood or urine screens

4. Persons or institutions given authorization

5. Persons or institutions given authorization in the first paragraph

6. Name of board

7. Date to which consent is effective

Chapter RL 8

ADMINISTRATIVE WARNINGS

RL 8.01 Authority and scope. Rules in this chapter are adopted under the authority of s. 440.205, Stats., to establish uniform procedures for the issuance and use of administrative warnings.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

RL 8.02 Definitions. As used in s. 440.205, Stats., and in this chapter:

(1) "Credential" means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 480, Stats.

(2) "Department" means the department of regulation and licensing.

(3) "Disciplinary authority" means the department or an attached examining board, affiliated credentialing board or board having authority to reprimand a credential holder.

(4) "Division" means the division of enforcement in the department.

(5) "First occurrence" means any of the following:

(a) The credential holder has never been charged as a respondent in a formal complaint filed under ch. RL 2.

(b) Other than the matter pending before the disciplinary authority, no informal complaint alleging the same or similar misconduct has been filed with the department against the credential holder.

(c) The credential holder has not been disciplined by a disciplinary authority in Wisconsin or another jurisdiction.

(6) "Minor violation" means all of the following:

(a) No significant harm was caused by misconduct of the credential holder.

(b) Continued practice by the credential holder presents no immediate danger to the public.

(c) If prosecuted, the likely result of prosecution would be a reprimand or a limitation requiring the credential holder to obtain additional education.

(d) The complaint does not warrant use of prosecutorial resources.

(e) The credential holder has not previously received an administrative warning.

(7) "Misconduct" means a violation of a statute or rule related to the profession or other conduct for which discipline may be imposed under chs. 440 to 480, Stats.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

RL 8.03 Findings before issuance of an administrative warning. Before issuance of an administrative warning, a disciplinary authority shall make all of the following findings:

(1) That there is specific evidence of misconduct by the credential holder.

(2) That the misconduct is a first occurrence for the credential holder.

(3) That the misconduct is a minor violation of a statute or rule related to the profession or other conduct for discipline may be imposed.

(4) That issuance of an administrative warning will adequately protect the public.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

RL 8.04 Issuance of an administrative warning. (1) An administrative warning shall be substantially in the form shown in Appendix I.

(2) An administrative warning may be issued to a credential holder by mailing the administrative warning to the last address provided by the credential holder to the department. Service by mail is complete on the date of mailing.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

RL 8.05 Request for a review of an administrative warning. A credential holder who has been issued an administrative warning may request the disciplinary authority to review the issuance of the administrative warning by filing a written request with the disciplinary authority within 20 days after the mailing of the administrative warning. The request shall be in writing and set forth:

(1) The credential holder's name and address.

(2) The reason for requesting a review.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

RL 8.06 Procedures. The procedures for an administrative warning review are:

(1) Within 45 calendar days of receipt of a request for review, the disciplinary authority shall notify the credential holder of the time and place of the review.

(2) No discovery is permitted. A credential holder may inspect records under s. 19.35, Stats., the public records law.

(3) The disciplinary authority or its designee shall preside over the review. The review shall be recorded by audio tape unless otherwise specified by the disciplinary authority.

(4) The disciplinary authority shall provide the credential holder with an opportunity to make a personal appearance before the disciplinary authority and present a statement. The disciplinary authority may request the division to appear and present a statement on issues raised by the credential holder. The disciplinary authority may establish a time limit for making a presentation. Unless otherwise determined by the disciplinary authority, the time for making a personal appearance shall be 20 minutes.

(5) If the Credential holder fails to appear for a review, or withdraws the request for a review, the disciplinary authority may note the failure to appear in the minutes and leave the administrative warning in effect without further action.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

RL 8.07 Transcription fees. (1) The fee charged for a transcript of a review under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

(b) If a transcript is prepared by the department, the department shall charge a transcription fee of $1.75 per page and a copying charge of $.25 per page. If 2 or more persons request a transcript, the department shall charge each requester a copying fee of $.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee of $.25 per page.

(2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of a petition of indigence signed under oath.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

Chapter RL 8

APPENDIX I

DEPARTMENT OF REGULATION AND LICENSING

[DISCIPLINARY AUTHORITY]

ADMINISTRATIVE WARNING

This administrative warning is issued by the {disciplinary authority} to {credential holder} pursuant to s. 440.205, Stats. The {disciplinary authority] makes the following findings:

1) That there is evidence of professional misconduct by {credential holder), to wit:

2) That this misconduct is a first occurrence for {credential holder}.

3) That this misconduct is a minor violation of {statute or rule).

4) That issuance of this administrative warning will adequately protect the public and no further action is warranted.

Therefore, the {disciplinary authority) issues this administrative warning and hereby puts the {credential holder) on notice that any subsequent violation may result in disciplinary action. The investigation of this matter is hereby closed.

Date:_____ _____

Signature of authorized representative
For (Disciplinary Authority}

Right to Review

You may obtain a review of this administrative warning by filing a written request with the {disciplinary authority) within 20 days of mailing of this warning. The review will offer the credential holder an opportunity to make a personal appearance before the (disciplinary authority).

The record that this administrative warning was issued is a public record.

The content of this warning is private and confidential.

Chapter RL 9

DENIAL OF RENEWAL APPLICATION BECAUSE APPLICANT IS LIABLE FOR DELINQUENT TAXES

RL 9.01 Authority. The rules in ch. RL 9 are adopted under the authority in s. 440.03, Stats.

History: Emerg. cr. eff. 11–14-96; Cr. Register, August, 1996. No. 488. eff. 9–1–96.

RL 9.02 Scope; nature of proceedings. The rules in this chapter govern the procedures for requesting the Wisconsin department of revenue to certify whether an applicant is liable for delinquent taxes owed to this state under s. 440.08 (4) (b), Stats., as created by 1995 Wis. Act 27 and amended by 1995 Wis. Act 233, to review denial of an application for rcncwal because the applicant is liable for delinquent taxes.

History: Emerg. cr. eff. 11–14–96; Cr. Register, August, 1996, No. 488, eff. 9–1–96.

RL 9.03 Definitions. In this chapter:

(1) "Applicant" means a person who applies for renewal of a credential. "Person" in this subsection includes a business entity.

(2) "Credential" has the meaning in s. 440.01 (2) (a), Stats.

(3) "Department" means the department of regulation and licensing.

(4) "Liable for any delinquent taxes owed to this state" has the meaning set forth in s. 73.0301 (1) (c), Stats.

History: Emerg. cr eff. 11–14–96; Cr. Register, **August. 1996,** No. **488,** eff. **9–1–96, correction in (4) made under s. 13.93 (2m) (b) 7., Stars.**

RL 9.04 Procedures for requestihg the department of revenue to certify whether an applicant for renewal is liable for delinquent taxes. **(1)** RENEWAL APPLICATION FORM. If the department receives a renewal application that does not include the information required by s. 440.08 (2g) (b), Stats., the application shall be denied unless the applicant provides the missing information within 20 days after the department first received the application.

Note: 1997 Wis. Act 191 repealed **s 440.08** (2g) **(b),** Stats.

(2) SCREENING FOR LIABILITY FOR DELINQUENT **TAXES.** The name and social security number or federal employer identification number of an applicant shall be compared with information at the Wisconsin department of revenue that identifies individuals and organizations who are liable for delinquent taxes owed to this state.

(3) NOTICE OF INTENT TO **DENY** BECAUSE OF TAX DELINQUENCY. If an applicant is identified as being liable for any delinquent taxes owed to this state in the screening process under sub. (2), the Wisconsin department of revenue shall mail a notice to the applicant at the last known address of the applicant according to s. 440.11, Stats., or to the address identified in the applicant's renewal application, if different from the address on file in the department. The notice shall state that the application for renewal submitted by the applicant shall be denied unless, within 10 days from the date of the mailing of the notice, the department of regulation and licensing receives a copy of a certificate of tax clearance issued by the Wisconsin department of revenue which shows that the applicant is not liable for delinquent state taxes or unless the Wisconsin department of revenue provides documentation to the department showing that the applicant is not liable for delinquent state taxes.

(4) OTHER REASONS FOR DENIAL If the department determines that grounds for denial of an application for renewal may exist other than the fact that the applicant is liable for any delinquent taxes owed to this state, the department shall make a determination on the issue of tax delinquency before investigating other issues of renewal eligibility.

History: Emerg. cr. eff. 11–14–96; Cr. Register, August, 1996, No. 488, eff. 9–1–96.

RL 9.05 Denial of renewal. The department shall deny an application for credential renewal if the applicant fails to complete the information on the application form under s. RL 9.04 or if the Wisconsin department of revenue certifies or affirms its certification under s. 440.08 (4) (b) 3., Stats., that the applicant is liable for delinquent taxes and the department does not receive a current certificate of tax clearance or the Wisconsin department of revenue does not provide documentation showing that the applicant is not liable for delinquent taxes within the time required under s. RL 9.04 (2) and (3). The department shall mail a notice of denial to the applicant that includes a statement of the facts that warrant the denial under s. 440.08 (4) (b), Stats., and a notice that the applicant may file a written request with the department to have the denial reviewed at a hearing before the Wisconsin department of revenue.

Note: Section **440.08 (4)** (b) **3.,** Stats., referred to here was repealed by **1997** Wis. Act **237** and **a** new, unrelated s. **440.08 (4)** (b) recreated.

History: Emerg. cr. eff. 11–14–96; Cr. Register, August, 1946, No. 488, eff. 9–1–96.

Chapter RL 10

USE OF PHARMACEUTICAL AGENTS BY LICENSED OPTOMETRISTS

RL 10.01 Definitions. As used in the rules in this chapter:

(1) "Adverse drug reaction" means an adverse, physical or psychological reaction experienced by a person resulting from diagnostic or therapeutic pharmaceutical agents administered by an optometrist which occurs within 24 hours after the drug is administered. An adverse drug reaction may be indicated by symptoms which include, but are not limited to, the following: red eye, painful eye, decrease in vision, pale or red swelling of the periocular or periorbital tissues, nausea, vomiting, fainting, mental confusion or cessation of respiration.

(2) "Adverse drug reaction referral plan" means a plan submitted to the department on an approved form in which the optometrist agrees to: a) refer patients who notify the optometrist of an adverse drug reaction to appropriate medical specialists or facilities; b) routinely advise the patient to immediately contact the optometrist if the patient experiences adverse reactions; and c) place in a patient's permanent record information describing any adverse drug reactions experienced by the patient and the date and time that any referral was made. Such plan shall include the names of at least 3 physicians, physician clinics or hospitals to whom the optometrist agrees to refer patients who experience an adverse drug reaction. At least one of these physicians shall be skilled in the diagnosis and treatment of diseases of the eye.

(3) "Approved institution" means a college of optometry accredited by the American council on optometric education approved by the optometry examining board which offers a course of study in general and ocular pharmacology meeting the requirements of **s.** 449.17 (4), Stats., or a course of study relating to the use of therapeutic pharmaceutical agents and the removal of superficial foreign bodies from an eye or from an appendage to the eye meeting the requirements of s. 449.18 (2), Stats.

Note: The optometry examining board annually reviews for approval the colleges of optometry accredited by the council on optomehy education of the American optometric association or other accrediting bodies. A list of board approved colleges of optometry is available from the board upon request.

(4) "Classroom hour": For the purpose of determining whether a course of study meets the requirements of **s.** 449.17 (4), Stats., "classroom hour" means a 50–60 minute period of lecture, group discussion or laboratory directly associated with a course in pharmacology; time spent working in a clinic other than as part of a laboratory directly associated with a course in pharmacology does not qualify as a "classroom hour".

(5) "Course of study in pharmacology" means **a** course of study completed in an approved institution after 1973 in general and clinical pharmacology as it relates to optometry with the characteristics described in **s.** 449.17 (4), Stats. For courses, such as continuing education courses, which do not lead to a degree in optometry to qualify as part of a course of study in pharmacology, the courses must include at least one examination on course content.

(6) "DPA certificate" means a certificate issued by the department to an optometrist approving an adverse reaction referral plan submitted by the optometrist and as evidence that the optometrist has completed all requirements in s. RL 10.03 and is entitled to use diagnostic pharmaceutical agents in accordance with ss. 449.17 and 449.19, Stats.

(8) "Diagnostic pharmaceutical agent" means any topical ocular diagnostic pharmaceutical agent which is an optometric means used to determine the visual efficiency of the human visual system, including refractive and functional abilities, or to diagnose the presence of ocular disease or ocular manifestations of systemic disease and other departures from normal. "Diagnostic pharmaceutical agents" include but are not limited to:

(a) *Mydriatics.*
1. Phenylephrine 2.5%.
2. Hydroxyamphetamine 1%.

(b) *Cycloplegics.*
1. Tropicamide 1%.
2. Cyclopentolate 1%.

(c) *Topical anesthetics.*
1. Benoxinate 0.4%.
2. Proparacaine 0.5%.
3. Tetracaine 0.5%.
4. Benoxinate 0.4% – Fluorescein 0.25% Combination.

(d) ***Dyes.***
1. Fluorescein 0.25% – Benoxinate 0.4% Combination.
2. Rose Bengal.

(e) *Miotics.*
1. Dapiprazole HCl.
2. Pilocarpine .125%.

(f) Any drug which is used for an ophthalmic diagnostic purpose and which is the subject of a new drug application approved by the food and drug administration under section 505 (c) (1) of the federal food, drug and cosmetic act, 21 USC 355, as amended.

(g) Any drug which is used for an ophthalmic diagnostic purpose and which is generally exempt from the new drug application approval requirement contained in section 505 of the federal food, drug and cosmetic act, 21 USC 355, as amended.

(9) "TPA certificate" means a certificate granted by the optometry examining board to an optometrist as evidence that the optometrist is certified to use therapeutic pharmaceutical agents in accordance with **s.** 449.18, Stats.

(10) "Therapeutic pharmaceutical agent" means a drug which is prescribed or administered for ocular therapeutic purposes. Therapeutic pharmaceutical agents include but are not limited to:

(a) Oral analgesics.
1. Acetaminophen.
2. Aspirin.
3. Salicylates.
4. Schedule III, IV and V narcotic analgesics.

(b) Topical decongestant agents and decongestant combinations.
1. Epinephrine HCl.
2. Hydroxyamphetamine HBr.
3. Naphazoline HCl.
4. Oxymetazoline HCl.
5. Phenylephrine HCl.
6. Tetrahydrozoline HCl.
7. Combinations of the above agents with antihistamines or zinc sulfate.

(c) *Antiallergy agents.*

1. Topical and oral antihistamine agents in the following drug categories.
a. Alkyamines.
b. Ethanolamines
c. Ethylenediamines.
d. Phenothiazines.
c. Piperazines.
f. Piperidines.
g. Terfenadines.
2. Cromolyn sodium, a mast cell stabilizing agent.

(d) Artificial tear solutions, ophthalmic irrigants and ocular lubricants.

(e) Hypertonic sodium chloride, a topical hyperosmotic agent.

(f) Yellow mercuric oxide, a miscellaneous preparation and product.

(g) Topical anesthetics.
1. Benoxinate HCI.
2. Benoxinate HCl and sodium fluorescein.
3. Proparacaine HCl.
4. Tetracaine HCI.

(h) Antibiotics.
1. Topical antibiotics.
a. Aminoglycosides.
b. Bacitracin.
c. Cephalosporins.
cm. Ciprofloxacin HCl.
d. Erythromycin.
e. Gramicidin.
em. Norfloxacin
f. Penicillins.
g. Polymyxin B.
h. Sulfonamides.
i. Tetracyclines.
j. Trimethoprim.
k. Zinc sulfate.
2. Oral antibiotics.
a. Erythromycin.
b. Tetracycline.
3. Topical antiviral agents.
a. Acyclovir.
b. Idoxuridine.
c. Trifluridine.
d. Vidarabine.
4. Acyclovir, an oral antiviral agent.

(i) *Anti–inflammatory agents.*
1. Oral non–steroidal anti–inflammatory agents.
a. Fenoprofen.
b. Ibuprofen.
c. Kctoprofen.
d. Naproxen.
2. Topical corticosteroid agents.
a. Dexamethasone.
b. Fluoromethalone.
c. Medrysonc.
d. Prednisolone.
e. Prednisolone and atropine combinations.
f. Topical corticosteroid and antibiotic combinations.
g. Topical corticosteroid and mydriatic combinations.
3. Topical non–steroidal agent, diclofenac sodium.

(j) *Topical anticholinergic agents.*
1. Atropine.
2. Atropine sulfate.
3. Cyclopentolate.
4. Homatropine.
5. Homatropine hydrogen bromide.
6. Scopolamine.
7. Tropicamide.

(k) *Antiglaucomatous agents.*
1. Sympathomimetics.
a. Dipivefrin.
b. Epinephrine.
2. Miotics, direct acting.
a. Acetylcholine.
b. Carbachol.
c. Pilocarpine.
3. Miotics, cholinesterase inhibitors.
a. Demecarium bromide.
b. Echothiophate.
c. Isoflurophate.
d. Physostigmine.
4. Topical beta–adrenergic blocking agents.
a. Betaxolol.
am. Carteolol HCl.
b. Levobunolol.
bm. Metipranolol HCl.
c. Timolol.
5. Oral carbonic anhydrase inhibitors.
a. Acetazolamide.
b. Dichlorphenamide.
c. Methazolamide.

(L) Any drug which is used for an ophthalmic therapeutic purpose and which is the subject of a new drug application approved by the food and drug administration under section *505* (c) (1) of the federal food, drug and cosmetic act, 21 USC *355*, as amended.

(m) Any drug which is used for an ophthalmic therapeutic purpose and which is generally exempt from the new drug application approval requirement contained in section *505* of the federal food, drug and cosmetic act, 21 USC *355*, as amended.

(n) Any drug which is used for an ophthalmic therapeutic purpose and which is certified by the food and drug administration pursuant to s. *507* (a) of the federal food, drug and cosmetic act, 21 USC *357*, or is exempt from certification under section *507* (c) of the act, as amended.

Note: Section 961.39. **Stats.,** contains certain limitations relating to the prescribing and administering **of** controlled substances by optometrists certified under section 449.18, Stats.

History: Cr. Register. January, 1979, No. 277, eff. 2–1–79; **am. (2)** and **(5), r.** (9) (d) 2., Register, April, 1979, No. 280, eff. 5–1–79; r. (7), renum. (8) and (9) to be (7) and (8), Register, November, 1986, No. 371, eff. 12–1–86; **r. (7).** Register, ***August,*** 1990, No. 416, eff. 9–1–90; **am. (intro.),** (1) and **(8), cr.** (9) and (10), Register. November, 1990, No. 419, **eff.** 12–1–90; cr. (8) (d) **2.,** (e), (10) **(h)** 1. cm. and em., **(i)** 3., **(k)** 4. am. and bm.. Register. June. 1993, No. 450, eff. 7–1–93; am. (3), **r.** and **recr.** (8) (intro.) and (10) **(intro.), cr.** (8) **(f),** (g), (10) **(L) to** (n), Register, April, 1994, No. 460, **eff.** 5–1–94.

RL 10.02 Restrictions and reports. (1) RESTRICTIONS. (a) *Certification and education.* Therapeutic pharmaceutical agents may be prescribed or administered by an optomchist who holds a current TPA certificate and who satisfies the continuing education requirements specified in s. Opt 6.04. Diagnostic pharmaceutical agents may be administered by an optometrist who holds a current DPA certificate and who successfully completes biennially a minimum of 1 hour of continuing education approved by the optometry examining board relating to new drugs which are used for ophthalmic diagnostic purposes and which are approved by the food and drug administration, or other topics as designated by the optometry examining board.

Note: Completion of the continuing education required in s. Opt 6.04 for TPA certification satisfies the continuing education requirement under this section for an optometrist who holds both a DPA and a TPA certificate.

(b) *Prescribing.* Therapeutic pharmaceutical agents may be prescribed or administered by an optometrist only for the ocular therapeutic purposes for which the drugs are intended. These drugs shall be prescribed or administered in accordance with minimum standards and procedures established in the optometric profession. An optometrist shall not prescribe or administer a therapeutic pharmaceutical agent which is not allowed under s. RL 10.01 (10). Approved agents may be used in combination only with other approved agents when appropriate. Prior to prescribing beta blockers or carbonic anhydrase inhibitors for the treatment of glaucoma, or any oral antiviral, or any other therapeutic pharmaceutical agent, as may be identified and designated in the future by the optometry examining board, which might prove to have significant systemic adverse reactions, the optometrist shall inform the patient's primary physician of his/her treatment plans and document that contact on the patient's chart. If the patient does not identify a primary physician, the patient shall be referred to a physician to determine the presence *or* absence of any systemic contraindications to the intended therapeutic agent. Following that assessment, and prior to prescribing, the prescribing optometrist shall contact the examining physician, documenting that contact on the patient's chart. Closed–angle glaucoma shall be considered an emergency in which the treating optometrist shall make immediate referral directly to a physician who specializes in the treatment of diseases of the eye and shall institute such emergency procedures as are directed by that physician.

(2) REPORTING REQUIRED. (a) Any optometrist certified to use therapeutic pharmaceutical agents shall file with the department within 10 working days of its occurrence a report on any adverse reaction resulting from the optometrist's administration of such agents. This report shall include the optometrist's name, address and license number, the patient's name, address and age, the patient's presenting problem, the diagnosis, the agent administered and the method of administration, the reaction and the subsequent action taken.

(b) Any optometrist certified to use diagnostic or therapeutic pharmaceutical agents shall file a revised adverse drug reaction plan with the department within 10 working days after the optometrist designates a new physician, physician clinic or hospital to which he or she agrees to refer patients who experience adverse drug reactions.

History: Cr. Register. November, 1990, No. 419, eff. 12–1–90; renum. (1) and (2) to be (1) (b) and (2) (a) and am. (1) (b), cr. **(1)** (a) and (2) (b), r. (3), Register. April, 1994, No. 460, eff. 5–1–94.

RL 10.03 Statement of approval required. A licensed optometrist may not use diagnostic pharmaceutical agents in the practice of optometry unless the optometrist has completed an application form and received a DPA certificate from the department. **A** licensed optometrist may not use therapeutic pharmaceutical agents in the practice of optometry unless the optometrist has completed an application form, met the requirements under s. 449.18, Stats., and received a TPA certificate from the optometry examining board.

History: Cr. Register, January, 1979, No. 277, eff. 2–1–79; am. Register, November, 1986. No. 371, eff. 12–1–86; renum. from RL 10.02 and am. Register, November, 1990, No. 419, eff. 12–1–90; CR **01–068:** am. Register January **2002** No. ***553,*** eff. **2–1–02**.

RL 10.04 Application for certificate. To obtain **a** DPA certificate, **an** optometrist must submit evidence to the department showing that the optometrist has:

(1) Completed a course of study in pharmacology.

(2) Successfully completed one of the following examination requirements:

(a) Obtained a score of not less than 75 on the pharmacology section of the examination administered prior to 1994 by the national board of examiners in optometry.

(b) Obtained passing scores on parts I and II of the examination administered after 1986 by the national board of examiners in optometry.

(c) Obtained a passing score on an examination approved by the department of regulation and licensing and the optometry examining board.

(3) Established an adverse reaction referral plan.

Note: The required score of "not less than 75" relates only to the pharmacology section of the national examination. Therefore, if all sections of the national examination were taken at once, the 75 score minimum applies only to the pharmacology section and not to the other sections of the examination.

History: Cr. Register, January, 1979, No. 277, eff. 2–1–79; r. and recr. (2), Register, August, 1990, No. 416, 9–1–90; renum. from RL 10.03. Register, November, 1990, **No. 419,** eff. 12–1–90; am. (2), Register, April, 1994, No. 460. eff. 5–1–94; am. (1), r. and recr. (2), Register, May, 1996, No. 485, eff. 6–1–96; CR 01–068: am. **(2)** (a). **r. (2)** (h) ***(intro.), renum. (2)*** *(b)* ***1. and 2.*** to ***be*** (2) **(b)** and ***(c)*** and am. **(2) (b),** Register January 2002 No. **553, eff. 2–1–02**.

Chapter HFS 132

NURSING HOMES

Subchapter VI — Services

Note: Chapter H 32 as it existed on July 31, 1982 was repealed and a new chapter HFS 132 was created effective August 1, 1982. Chapter HSS 132 was renumbered chapter HFS 132 under s. 13.93 (2m) (b) 1., Stats., and corrections made unders. 13.93 (2m) (b) 6. and 7., Stats., Register, December, 1996, No. 492.

HFS 132.65 Pharmaceutical services. (1) DEFINITIONS. As used in this section:

(a) "Medication" has the same meaning as the term "drug" defined in s. 450.06, Stats.

(b) "Prescription medication" has the same meaning as the term "prescription drug" defined in s. 450.07, Stats.

(c) "Schedule II drug" means any medication listed in s. 961.16, Stats.

(2) SERVICES. Each facility shall provide for obtaining medications for the residents from licensed pharmacies.

(3) SUPERVISION. (a) ***Pharmaceutical services committee.*** 1. The facility shall have a pharmaceutical services committee consisting of at least the consulting or staff pharmacist, the director of nursing services or consulting registered nurse, the administrator and a physician.

2. The committee shall meet at least quarterly and document its activities, findings and recommendations.

3. The committee shall establish, maintain, and supervise such policies and procedures as are necessary to comply with this chapter and assure that resident needs are met, including but not limited to the following:

a. In facilities maintaining a bulk supply of non–prescription medications, the procedures for handling, administering, and maintaining records of receipt and disposition of bulk supplies;

b. The automatic termination of medication orders which are not limited as to time or dosages;

c. Review of medication errors;

d. The maintenance of an emergency medication kit under sub. (4); and

e. The maintenance of a contingency supply of medications, if any, as permitted by sub. (5).

(b) ***Medication consultant.*** 1. Each skilled nursing facility shall retain a registered pharmacist who shall visit the facility at least monthly to review the drug regimen of each resident and medication practices. The pharmacist shall submit a written report of findings at least quarterly to the facility's pharmaceutical services committee.

2. Each intermediate care facility shall retain a registered pharmacist who shall visit the facility at least monthly to review medication practices and the drug regimen of each resident and who shall notify the attending physician if changes are appropriate.. The pharmacist shall submit a written report of findings at least quarterly *to* the facility's pharmaceutical services committee.

(4) EMERGENCY MEDICATION KIT. (a) A facility may have one or more emergency medication kits. All emergency medication kits shall be under the control of a pharmacist.

(b) The emergency kit shall be sealed and stored in a locked area.

(5) CONTINGENCY SUPPLY OF MEDICATIONS. (a) ***Maintenance.*** A facility may have a contingency supply of medications not to exceed 10 units of any medication. Any contingency supply of medications must be under the control of a pharmacist.

(b) ***Storage.*** Contingency drugs shall be stored at a nursing unit, except that those medications requiring refrigeration shall be stored in a refrigerator.

(c) ***Single units.*** Contingency medications shall be stored in single unit containers, a unit being a single capsule, tablet, ampule, tubex, or suppository.

(d) ***Committee authorization.*** The pharmaceutical services committee shall determine which medications and strengths of medications are to be stocked in the contingency storage unit and the procedures for use and restocking of the medications.

(e) ***Control.*** Unless controlled by a "proof–of–use" system, as provided by sub. (6) (e), a copy of the pharmacy communication order shall be placed in the contingency storage unit when any medication is removed.

(6) REQUIREMENTS FOR ALL MEDICATION SYSTEMS. (a) ***Obtaining new medications.*** 1. When medications are needed which are not stocked, a registered nurse or designee shall telephone an order to the pharmacist who shall fill the order and release the medication in return for a copy of the physician's written order.

2. When new medications are needed which are stocked, a copy of the resident's new medication order shall be sent to the pharmacist filling medication orders for the resident.

(b) ***Storing and labeling medications.*** Unless exempted under par. (f), all medications shall be handled in accordance with the following provisions:

1. 'Storage.' Medications shall be stored near nurse's stations, in locked cabinets, closets or rooms, conveniently located, well lighted, and kept at a temperature of no more than 85"**F.** (29"C.).

2. 'Transfer between containers.' Medications shall be stored in their original containers, and not transferred between containers, except by a physician or pharmacist.

3. 'Controlled substances.' Separately locked and securely fastened boxes or drawers, or permanently affixed compartments, within the locked medication area shall be provided for storage of schedule II drugs, subject to 21 USC ch. 13, and Wisconsin's uniform controlled substance act, ch. 961, Stats.

4. 'Separation of medications.' Medications packaged for individual residents shall be kept physically separated.

5. 'Refrigeration.' Medications requiring refrigeration shall be kept in a separate covered container and locked, unless the refrigeration is available in a locked drug room.

6. 'External use of medications.' Poisons and medications for external use only shall be kept in a locked cabinet and separate from other medications, except that time–released transdermal drug delivery systems, including nitroglycerin ointments, may be kept with internal medications.

7. 'Accessibility to drugs.' Medications shall be accessible only to the registered nurse or designee. In facilities where no registered nurse is required, the medications shall be accessible only to the administrator or designee. The key shall be in the possession of the person who is on duty and assigned to administer the medications.

8. 'Labeling medications.' Prescription medications shall be labeled with the expiration date and as required by s. 450.11 (4), Stats. Non–prescription medications shall be labeled with the name of the medication, directions for use, the expiration date and the name of the resident taking the medication.

(c) ***Destruction of medications.*** 1. 'Time limit.' Unless otherwise ordered by a physician, a resident's medication not returned to the pharmacy for credit shall be destroyed within 72 hours of a physician's order discontinuing its use, the resident's discharge, the resident's death or passage of its expiration date. No resident's medication may be held in the facility for more than 30 days unless an order is written every 30 days to hold the medication.

2. 'Procedure.' Records shall be kept of all medication returned for credit. Any medication not returned for credit shall be destroyed in the facility and a record of the destruction shall be witnessed, signed and dated by 2 or more personnel licensed or registered in the health field.

3. 'Remaining controlled substances.' Any controlled substance not returned for credit and remaining afier the discontinuance of a physician's orders or the discharge or death of the resident shall be

inventoried on the appropriate U.S. drug enforcement agency form. One copy shall be sent to the U.S. drug enforcement agency and one copy shall be kept on file in the facility.

(d) ***Control of medications.*** 1. 'Receipt of medications.' The administrator or a physician, nurse, pharmacist, or the designee of any of these may be an agent of the resident for the receipt of medications in accordance with s. Phar 1.19 (5).

Note: Phar 1.19 was repealed eff. 2–1–83.

2. 'Signatures.' When the medication is received by the facility, the person completing the control record shall sign the record indicating the amount received.

3. 'Discontinuance of schedule II drugs.' The use of schedule II drugs shall be discontinued after 72 hours unless the original order specifies a greater period of time not to exceed 60 days.

(e) Proof-of–use record. 1. For schedule II drugs, a proof–of–use record shall be maintained which lists, on separate proof–of–use sheets for each type and strength of schedule II drug, the date and time administered, resident's name, physician's name, dose, signature of the person administering dose, and balance.

2. Proof–of–use records shall be audited daily by the registered nurse or designee, except that in facilities in which a registered nurse is not required, the administrator or designee shall perform the audit of proof–of–use records daily.

(f) ***Resident control and use of medications.*** 1. Residents may have medications in their possession or stored at their bedside on the order of a physician.

2. Medications which, if ingested or brought into contact with the nasal or eye mucosa, would produce toxic or irritant effects shall be stored and used only in accordance with the health, safety, and welfare of all residents.

Note: See s. HFS 132.60 (5) (d) 4. for permission for self–administration of medications.

(7) ADDITIONAL REQUIREMENTS FOR UNIT DOSE SYSTEMS. (a) ***Scope.*** When a unit dose drug delivery system is used, the requirements of this subsection shall apply in addition to those of sub. (6).

(b) ***General procedures.*** 1. The individual medication shall be labeled with the drug name, strength, expiration date, and lot or control number.

2. A resident's medication tray or drawer shall be labeled with the resident's name and room number.

3. Each medication shall be dispensed separately in single unit dose packaging exactly as ordered by the physician, and in a manner to ensure the stability of the medication.

4. An individual resident's supply of drugs shall be placed in a separate, individually labeled container and transferred to the nursing station and placed in a locked cabinet or cart. This supply shall not exceed **4** days for any one resident.

5. If not delivered from the pharmacy to the facility by the pharmacist, the pharmacist's agent shall transport unit dose drugs in locked containers.

6. The individual medication shall remain in the identifiable unit dose package until directly administered to the resident. Transferring between containers is prohibited.

7. Unit dose carts or cassettes shall be kept in a locked area when not in use.

History: Cr. Register, July, 1982, No. **319, eff. 8–1–82; r. and recr. (3) (b), am. (6) (a), (b) 6. and (c), Register, January, 1987,** No. **373, eff. 2–1–87; am. (3) (b) 2., (6) (b) 8. and (c)** 1. **and 3., Register, February, 1989,** No. **398, eff. 3–1–89; correction in (1) (c) made under s. 13.93 (2m) (b) 7., Stats., Register, August, 2000,** No. **536.**

FILING A COMPLAINT

COMPLAINTS AND THE DISCIPLINARY PROCESSED

Board Authority for Professional Discipline

Each of the licensing boards in the department has statutory authority to take disciplinary action against licensees who engage in unprofessional conduct or, violate other rules/statutes of the board. Unprofessional conduct typically includes: practicing fraudulently, negligently, or incompetently, practicing while being impaired by alcohol, drugs or mental disability, conviction for a crime related to the licensed practice and similar serious matters.

In taking disciplinary action, boards have the authority to reprimand a licensee, to suspend, revoke, or limit a license. The purposes of professional discipline, as defined by the Wisconsin Supreme court, are: 1) to protect the public, 2) to promote the rehabilitation of the licensee, 3) to deter other licensees from engaging in similar conduct and 4) to publicly express disapproval of certain conduct.

How to File A Complaint

Anyone who wishes to file a complaint against a licensee of a board or a complaint involving activity with the jurisdiction of that board should do so in writing. Preferably a complaint form should be completed. Complaint forms are available either through the department or the Examining Board offices at 1400 East Washington Avenue, Madison, Wisconsin, mailing address, P.O. Box 8935, Madison, Wisconsin, 53708. The complaint forms should be completed in detail, including the who, what, when, and where of a situation. The information should be set forth in chronological order as best as it can be recalled. If written documents are involved, copies should be included.

How the Complaint Is Processed

After a complaint is received, it is logged in the department's Division of Enforcement and then screened to determine whether or not the matter is something over which the board has jurisdiction; and, if so, to identify the statute or rule that may have been violated. If the board does have jurisdiction, the complaint is assigned to an attorney and investigator for investigation.

The attorney and the investigator confer during the course of the investigation. In addition, a member of the board may be assigned as an advisor in the case. Investigative contacts can be made by telephone, letter, personal interview or any combination of those procedures. The investigation involves gathering relevant facts of the case. Persons with knowledge of the case are contacted. This usually includes the person who made the complaint and the person about whom the complaint was made. If treatment records are involved, they will be obtained. Confidentially of the records will be maintained as required by law.

Once the investigation is complete, the investigator, attorney and board advisor review the results of the investigation and come to a preliminary decision on whether the case should be closed with no action taken, or whether formal disciplinary action should be commenced.

If the preliminary determination is for case closure, that recommendation, along with relevant findings, is presented by the investigator to the members of the board in closed session at a scheduled board meeting. If the board concurs, the file is closed by board motion. Letters are then sent to the person who filed the complaint and to the licensee, explaining that the case was closed and the reasons for closure.

If the determination by the investigative team is to commence disciplinary action, the Division of Enforcement attorney prepares all necessary documents, including a formal complaint against the licensee, and the matter is scheduled for a hearing.

How The Formal Complaint is Resolved

Disciplinary hearings are conducted by hearing examiners, who are attorneys. While the statutes give the board the authority to preside over hearings without the use of a hearing examiner, most boards request that a hearing examiner be used. Furthermore, if the board members made the decision to issue a complaint, an examiner must be used. This ensures that the prosecutorial and adjudicative functions are separate, and that a fair and impartial decision is made.

The hearing examiner will generally schedule a pre-hearing conference between the parties. The major purposes of the pre-hearing conference are to set forth the issues in the case, determine what matters can be resolved without the need for formal testimony, and to establish a schedule for bringing the matter to hearing. Some of the cases, that may lead to the issuance of a formal complaint, are resolved by stipulation between the parties. Of course, such stipulations are subject to the approval of the board involved.

If a formal hearing is necessary, in most cases the hearing examiner presides over it. All testimony is under oath and transcribed. The parties are expected to call whatever witnesses are necessary. The process is very much like a trial. The length of the hearings can range from a few hours to several days. Once the hearing is complete, the hearing examiner prepares proposed findings of fact, proposed conclusions of law and a proposed decision. This is filed with the board, which reviews the decision and determines whether to affirm, reverse or amend it. If a member of the board participated in the investigation, that person is not involved in the board's decision on the case.

The board's options in disciplinary matters are: dismissing the complaint, reprimanding the licensee, limiting, suspending or revoking the licensee's license, or, in some instances, assessing a forfeiture against the licensee. Boards do not have the authority to award monetary damages or to get money back that a party may believe is due. If a party is dissatisfied with a board decision, the decision can be appealed to circuit court. A circuit court decision can in turn be appealed to higher courts.

The above steps set forth very generally the process that takes place if a complaint is filed against a licensee of one of the boards attached to the department. Each case is different, and some variations may occur among the boards.

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INDEX

TO THE WISCONSIN STATUTES AND ADMINISTRATIVE: RULES REPRINTED IN THIS BOOKLET

References are to statutes sections or administrative rules. Administrative rules citations begin with the prefix "N", "PHAR","RL", "MED, or "HFS